129-58

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 94.

JOHN A. WALLACE, APPELLANT,

vs.

EDWARD JOHNSTONE, A. L. CONNABLE AND C. F. DAVIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED OCTOBER 10, 1885.

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INDEX.

	Original.	Print.
Caption	1	1
Transcript from circuit court Clay county, Iowa	3	1
Record entries and clerk's certificate	3	1
Petition for removal to U. S. court	6	2
Bond for removal to U. S. court	8	3
Reply	11	4
Answer of John A. Wallace	13	4
Petition in equity	21	7
Exhibit A—Contract between Johnstone *et al.* and Ford, Feb. 17, 1875, &c	27	10
Original notice	31	10
Præcipe for appearance of complainants	35	11
Motion for costs	37	12
Answer of E. R. Ford	40	12
Stipulation and order to open depositions	44	13
Stipulation as to submission	47	14
Order of court as to submission	49	14
Replication to answer John A. Wallace	51	15
Cross-bill of John A. Wallace	66	18
Answer to cross-bill	67	19
Exhibit A—Statement showing disposition of lands purchased of Wallace *et ux*, Feb. 17, 1875	73	20
Replication to answer to cross-bill	75	21
Motion to strike parts of testimony	78	22

JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 13, 1888.

	Original.	Print.
Stipulation as to filing papers	82	23
Final decree	85	23
Appeal bond	91	25
Evidence for complainants	96	27
Deposition of Edward Johnstone	97	27
C. F. Davis	134	37
Charles P. Birge	146	40
A. L. Connable	154	42
Exhibit 1—Deed of Wallace *et ux* to Johnstone *et al.* Feb. 17, 1875	164	45
2—Deed of Wallace *et ux* to Johnstone *et al.* Feb. 17, 1875	167	45
3—Power of attorney from Frances E. Wallace to John A. Wallace, Feb. 15, 1875	171	46
4—Letter of Leighton *et al.* to Wallace, Feb. 17, 1875, &c	177	48
5—Deed of Leighton *et ux* to Davis, Aug. 5, 1875	180	50
6—Deed " " "	182	50
7—Deed of Davis *et ux* to Johnstone, Aug 6, 1875	185	51
8—Deed " " "	188	52
9—Statement of taxes paid by Johnstone *et al.* on land purchased of Wallace, Feb. 17, 1875	192	53
Deposition of W. B. Collins	196	54
John A. Elliott	219	60
James M. Hoskins	236	65
Evidence for defendants	252	70
Agreements as to testimony	252	70
Exhibit 1—Contract between Johnstone *et al.* and Ford, Feb. 17, 1875	255	71
Deposition of E. R. Ford	261	72
Wm. Ballinger	309	86
John A. Wallace	344	97
A. W. Miller	455	131
J. B. Edmunds	460	132
Clerk's certificate to transcript	469	135
Additional transcript	470	135
Motion to file and enter mandate	473	136
Mandate of the Supreme Court of the United States	475	136
Order on mandate	478	138
Petition for appeal	480	138
Appeal bond	495	142
Order allowing appeal	499	144
Citation and proof of service of same	501	144
Affidavit as to posting petition for appeal	504	145
Clerk's certificate to additional transcript	505	145

1 Pleas in the circuit court of the United States for the southern district of Iowa, central division, at a term thereof begun and holden at the United States court-house, in the city of Des Moines, in said district, on the second Tuesday of May, it being the 8th day of May, A. D. 1884.

Present: Honorable George W. McCrary, Honorable James M. Love, and Honorable O. P. Shiras, judges.

Attest: E. R. MASON, *Clerk.*

2 Be it remembered that heretofore, to wit, on the 15th day of April, 1882, a transcript was filed in the clerk's office of the circuit court of the United States for the district of Iowa, central division, from the circuit court of the State of Iowa in and for Clay county, in a certain cause wherein Edward Johnstone *et al.* were complainants and John A. Wallace *et al.* were defendants; which said transcript is in the words and figures following, to wit:

3 STATE OF IOWA, } *ss:*
Clay County, }

Be it remembered that at a term of the circuit court of Iowa holden in and for said county, at Spencer, on the 28 day of Feb., A. D. 1882, were present the Hon. Jno. N. Weaver, sole presiding judge; P. W. Madden, sheriff of said county, and H. Chamberlain, clerk of said court, when the following proceedings were had, to wit:

EDWARD JOHNSTONE, A. L. CONNABLE, & C. F. DAVIS } No. 550.
vs.
JOHN A. WALLACE & E. R. FORD. }

Now, to wit, this 28th day of Feb., A. D. 1882, this cause being reached, comes the defendant, John A. Wallace, by his attorney, Ackley Hubbard, and files his answer.

Now, to wit, this 1st day of March, 1882, this cause being reached, comes the plaintiff-, by their attorneys, Soper & Crawford, and the defendant, John A. Wallace, appeared by his attorney, Ackley Hubbard, but the defendant, E. R. Ford, came not either in
4 person nor by attorney, but made default; and the court, having examined the proof of publication endorsed on the original notice filed herein, finds that said defendant has been duly and legally served with notice of the pendancy of this action, as required by law, and said defendant, E. R. Ford, although three times solemnly called in open court —; he is therefore adjudged in default.

And, by consent of the parties hereto, the plaintiff- has 30 days in which to file reply; whereupon this cause is set down for trial at the next regular term of this court, upon written evidence taken in the form of depositions.

THE STATE OF IOWA, } ss:
Clay County, }

I, H. Chamberlain, clerk of the circuit court in and for said county, do certify that the foregoing is a true copy of the record in the case of Edward Johnstone *et al.*, plaintiffs, *versus* John A. Wallace *et al.*, defendant-, as the same appears of record in my office.

Witness my hand and the seal of said court, hereto affixed at my office, in Spencer, in said county, on this 6 day of April, 1882.

5 [SEAL.] H. CHAMBERLAIN, *Clerk.*

6 *Petition for Removal.*

In Circuit Court of Clay County, Iowa.

EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS, Plaintiffs,
vs.
JOHN A. WALLACE & E. R. FORD, Defendants.

The plaintiffs above named state—

1st. That each and all of them are now and were at the commencement of this suit citizens of the State of Iowa, residing at the city of Keokuk, in Lee county.

2nd. The defendants above named are now and were at the commencement of this suit each and all citizens of the State of Missouri, the defendant Wallace residing in the city of St. Louis and the defendant Ford residing in St. Charles county, in that State.

3rd. The amount in controversy in the suit exceeds $500, exclusive of the costs, and is between citizens of different States.

4th. Clay county, Iowa, in which this suit is brought, is in the central division of the district of Iowa.

7 Wherefore the plaintiffs pray that this cause may be removed to the circuit court of the United States for the district of Iowa, central division, at Des Moines.

SOPER AND CRAWFORD AND
HAGERMAN, McCRARRY & HAGERMAN,
Att'ys for Plaintiffs.

STATE OF IOWA, } ss:
Lee County, }

I, Edward Johnstone, on oath state that I am one of the plaintiffs in the above-named suit, and that I have read the allegations of the foregoing petition, and same are true as I verily believe.

EDWARD JOHNSTONE.

Subscribed and sworn to before me this 13th day of March, 1882.
[A. J. Mathias, Iowa, Notarial Seal.]

A. J. MATHIAS,
Notary Public.

(Endorsed:) Johnstone *vs.* Wallace. Petition for removal.
8 Circuit court, Clay county, Iowa. Filed March 4, 1882. H. Chamberlain, clerk.

Bond.

Know all men by these presents that we, Edward Johnstone, A. L. Connable, and C. F. Davis, as principals, and W. B. Collins, as sure*ties*, are hereby held and firmly bound unto John A. Wallace and E. R. Ford in the sum of $100, upon the following conditions, to wit:

Whereas the said Edward Johnstone, A. L. Connable, and C. F. Davis are citizens of the State of Iowa and have sued John A. Wallace and E. R. Ford, who are citizens of the State of Missouri, in the circuit court of Clay county, Iowa, which suit is now pending;

And whereas the said Johnstone, Connable, and Davis have filed their petitions in said cause to remove said cause to the United
9 States circuit court for the district of Iowa, on the ground that the same is a controversy between citizens of different States, in which an amount exceeding $500, exclusive of costs, is involved:

Now, if the said Johnstone, Connable, and Davis shall, on the first day of the next term of the United States circuit court for the district of Iowa, at the central division, of Des Moines, enter a copy of the records in such suit, now pending in said circuit court of Clay county, Iowa, as above set forth, and shall pay all costs that may be awarded by the United States circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise of full force and effect.

EDWARD JOHNSTONE.
A. L. CONNABLE.
C. F. DAVIS.
W. B. COLLINS (*Surety*).

STATE OF IOWA, } ss:
Lee County, }

10 —, W. B. Collins, on oath state that I am the surety on the foregoing bond, and that I am worth, in unincumbered real estate in Iowa, over and above all exemptions and liabilities, the amount of the said bond.

W. B. COLLINS.

Subscribed and sworn to before me this 13th day of March, 1882.

[A. J. Mathias, Iowa, Notarial Seal.]

A. J. MATHIAS,
Notary Public.

(Endorsed:) Johnstone *vs.* Wallace. Bond. Circuit court, Clay county, Iowa. Filed and approved March, 1882. H. Chamberlain, clerk.

11 *Reply.*

In the Circuit Court of Clay County, Ia.

EDWARD JOHNSTONE, A. L. CONNABLE, & C. F. DAVIS, Plaintiffs,

vs.

JOHN A. WALLACE and E. R. FORD, Defendants.

The plaintiff-, for reply to the answer of the defendant, John A. Wallace, state—

1st. They deny each and every allegation in said answer contained which in any way modifies or conflicts with the allegations set forth in the petition.

2nd. They specially deny loaning the said defendant or E. R. Ford any sum of money, as alleged in the answer, and charging or receiving therefor any usurious interest whatever.

3rd. They allege that the only transaction they ever had with the defendant Wallace in relation to the land in controversy was that they purchased the same from him and paid him there-

12 for the sum of $\$4{,}870\frac{00}{100}$. Wherefore the plaintiffs pray that the relief asked for in their original petition may be granted.

SOPER & CRAWFORD &
HAGERMAN, McCRARY & HAGERMAN,
Att'ys for Plaintiffs.

STATE OF IOWA, } *ss:*
Lee County, }

I, Edward Johnstone, on oath state that I am one of the plaintiffs in the above-named suit, and that I have read the allegations in the foregoing reply, and same are true as I verily believe.

EDWARD JOHNSTONE.

Subscribed and sworn to before me on the 13th day of March, 1882.

[A. J. Mathias, Iowa, Notarial Seal.]

A. J. MATHIAS,
Notary Public.

(Endorsed:) Johnstone *vs.* Wallace. Reply. Circuit court, Clay county, Iowa. Filed March 4, 1882. H. Chamberlain, clerk.

13 *Answer of Defendant, John A. Wallace.*

In the Circuit Court of Clay County, Iowa. Feb'y Term, 1882.

EDWARD JOHNSTONE, A. L. CONNABLE, & C. F. DAVIS, Pl'ffs,

vs.

JOHN A. WALLACE, E. R. FORD, D'f'ts.

1. And now comes the defendant, John A. Wallace, and denies each and every allegation of the petition not herein admitted.

2. The defendant admits the allegation of the 1st count of the petition.

3. The defendant admits that on the 17th day of February, 1875, he executed an instrument, which upon its face purports to be a deed of general warranty to the plaintiffs and one Wm. Leighton of, in, and to the lands described in the petition.

4. Defendant avers that in the year 1873, and for 10 years
14 prior thereto, he resided where the plaintiffs reside, to wit, in the city of Keokuk, Lee county, Iowa, and said city was for said time his home.

5. That in the latter part of the said year 1873 he removed with his family from said Keokuk, Iowa, to St. Louis, Mo., and said city of St. Louis has been his home ever since.

6. That as soon as he went to St. Louis he engaged in the loan, brokerage, and real estate business, and that during the winter of 1874–'5 he became the owner of the land described in the petition.

7. That defendant paid for said land an average of $10 per acre, which is $32,000 in all.

8. That said land was worth, on the 17th day of Feb'y., 1875, not less than $20,000 in cash.

9. That the said E. R. Ford, defendant herein, was at that time a money broker, and defendant applied to said Ford to obtain a loan on said land some days prior to Feb'y 17, 1875.

15 10. That said Ford informed def't that he could procure a loan for d'f't at Keokuk, Iowa, and def't came to Keokuk, Iowa, about one week before said Feb'y 17, 1875, to obtain the loan, and brought the said Ford with him, and paid his expences to Keokuk, Iowa, from St. Louis, Mo.

11. That said Ford brought this defendant to the plaintiffs and said Leighton in this case as the persons who would loan him money.

12. That d'f't applied to them by, through, and with said Ford for a loan upon said land, and they were willing to make the loan, but were not satisfied with simply 10 per cent. interest.

13. It was thereupon agreed that defendant should convey the title to said lands to said persons and take back an option or contract of repurchase in sixty days.

16 14. That it was not defendant's intention to part permanently with the title to said real estate, and the pl'ffs and said Leighton so understood the matter and knew same to be the fact.

15. It was agreed finally that the pl'ffs and said Leighton should pay to the defendant about $3,250 in cash; should give their paper for about $4,000 more, and for said accommodation def't was to pay them $5,800 in 60 days from said Feb'y 17th, 1875.

16. That the contract or option named in the 3d count of the petition is the paper by which def't was to have a reconveyance in 60 days from Feb. 17, 1875.

17. That said option or contract was made to said E. R. Ford, and said E. R. Ford was to assign same to def't; all of which plain-

tiffs and said Leighton well knew, and was so made to
17 avoid the usury law of the State of Iowa.

18. That it was made, executed, and delivered at the same time and contemporaneous with the said deed and as a part of the transaction by which said def't borrowed of pl'ffs and said Leighton said sum of about $4,250.

19. That in truth and in fact said contract or option was assigned to def't by said Ford before it was signed and executed by said parties; all of which they well knew and understood.

20. That the only part taken by said Ford in said matter was for def't; all of which they well knew.

21. That said Ford paid nothing for said option or contract, and same was put in his name by pl'ffs and said Leighton to be assigned to d'f't, so as to avoid usury.

18 22. That said loan was obtained by def't in good faith, and def't was willing to bind himself in way he did for said $5,800 for the use of said $4,250 for 60 days because he badly needed money & believed he could sell the land so as to pay them said amount in said time and leave a large surplus for himself.

23. That said deed was given as security for said $5,800, which def't was to pay them, in the way stated, in 60 days.

24. The defendant gives the amount he received of them at $4,250, but it may have been a little more or less, and def't calls upon pl'ffs for strict proof of the actual amount.

25. That def't has considered himself indebted to pl'ffs and said Leighton in the sum of $5,800 and lawful interest from
19 Feb. 17th, 1875, except that def't now pleads the usury law of the State of Iowa and asks that he be only required to pay pl'ffs the amount he actually got of them, which he is willing to admit is about $4,250.

26. Whereupon the d'f't prays that said deed may be declared by the court to be a mortgage; that the title to said real estate be decreed to be in the defendant, subject to such claims as the pl'ffs may legitamately have against it by virtue of said deed and any taxes they may have since paid.

That def't have a legal right to redeem as provided by law upon such terms of payment of such amount as the court shall think just and proper, and for such other relief as he is in equity and good conscience entitled to and the court competent to give.

ACKLEY HUBBARD,
Att'y for Def't Wallace.

20 STATE OF IOWA, } ss:
Lee County, }

I, John A. Wallace, on oath say I am def't in the above answer, and that the statements and allegations of said answer are true as I verily believe.

JOHN A. WALLACE.

Subscribed and sworn to by John A. Wallace before me this Feb'y 25th, 1882.

[Wm. Ballinger, Lee Co., Iowa, Notarial Seal.]

WM. BALLINGER,
Notary Public.

(Endorsed:) In circuit court, Clay county, Iowa. Edward Johnstone *et al. vs.* John A. Wallace. Answer. Circuit court, Clay county, Iowa. Filed Feb. 28, 1882. H. Chamberlain, clerk. Ackley Hubbard, att'y for def't.

21 *Petition in Equity.*

In the Circuit Court of Clay County, in the State of Iowa. February Term, 1882.

EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS, Plaintiffs,
vs.
JOHN A. WALLACE and E. R. FORD, Defendants.

The plaintiffs respectfully show—

1st. On the 17th day of February, 1875, the defendant, John A. Wallace, was the owner in fee of the following-described real estate lying and being in the State of Iowa, to wit:

Section 36, township 94, range 44, containing six hundred and forty acres, in the county of Sioux, and section 10, township 94, range 36, 640 acres; section 18, township 94, range 36, 624 acres; N. ½ section 8, township 94, range 37, 320 acres; N. ½ & S. E. ¼ of section 13, township 94, range 37, 480 acres; E. ½ section 17, township 94, range 37, 320 acres; S. W. ¼ of section 35, township 94, range 37, 160 acres, in the county of Clay.

22 2. On the said 17th day of February, A. D. 1875, the said John A. Wallace, for a valuable consideration, conveyed said lands, by deed of general warranty, to the plaintiff and one William Leighton, which deed was duly recorded in Book I, page 191, of the Records of Deeds in said Clay county, and in Book G, page 59, of the Records of Deeds of said Sioux county.

3. That on the said 17th day of February, 1875, the said plaintiffs and the said Wm. Leighton executed and delivered to the defendant, E. R. Ford, their certain contract in writing, a copy of which is hereto annexed, marked Exhibit "A" and made a part hereof, whereby they gave to the said defendant the option of purchasing the lands hereinbefore described for the period of sixty days from the date of said writing, namely, February 17th, 1875, and conditioned that if the said Ford or his assigns should in said sixty days

23 deposit or cause to be deposited to the credit of the said parties of the first part in the Keokuk Savings Bank of Keokuk, Iowa, the sum of fifty-eight hundred and seventy-six dollars, or pay to them the said sum in said city of Keokuk within said period of time, then they would make and deliver to the said Ford or to his assigns a deed to said lands with warranty against

the claims of all persons claiming by, through, or under them or either of them.

4. The said instrument of writing was duly acknowledged and has been recorded in the records of deeds of Clay county, in Book I, page 277, and in Book —, page —, of Sioux county.

5. That the said Ford, on the — day of February, A. D. 1875, assigned in writing, on the back thereof, the said written agreement, as will appear by reference to Exhibit "A," herewith filed, to the the defendant, John A. Wallace.

24 6. On August 5th, 1875, the said Wm. Leighton conveyed his undivided fourth interest in said lands to the plaintiff, C. F. Davis, as will appear by deed duly recorded in Book I, page 336, of Deed Records of Clay county, and Book —, page —, of Sioux county.

7. On August 6th, 1875, the said C. F. Davis conveyed one-half of the interest of the said Leighton, acquired by him by the said deed last above mentioned, in said lands, being a one-eighth interest in the whole lands, to the plaintiff, Edward Johnstone, by deed duly recorded in Book I, page 356, of Deed Records of Clay county, and Book —, page —, of Sioux county.

8. Neither the defendant, E. R. Ford, or his assignee, the defendant, John A. Wallace, have ever paid anything on said lands, and neither of them ever exercised within the sixty days or since the option of purchasing given by the written contract, Exhibit

25 "A," and the plaintiffs are advised and believe that their rights thereunder are forfeited.

9. The plaintiffs upon the purchase of said lands from the said Wallace assumed control of them and have paid taxes upon them, and neither the said Wallace or the said Ford have paid taxes on same or ever assumed or attempted to assume any control over the same.

10. The defendants are now residents of the State of Iowa.

11. The defendants have no rights under the said written contract nor any interest, legal or equitable, in the said lands; but the said contract, being upon the records of the counties where the lands lie, constitute a cloud upon the title to the lands.

Wherefore the plaintiffs pray that the said contract of February 17th, 1875, be declared forfeited, re-cinded, and cancelled, and the title of the plaintiffs in and to said lands be quieted against

26 all claims of the defendants or either of them, and for such further relief as to equity may seem proper.

HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Plaintiffs.

STATE OF IOWA, } *County of Lee,* } *sct:*

I, Edward Johnstone, on oath say that I am one of the plaintiffs in foregoing petition; that I have read the foregoing petition, and the allegations thereof are true, as I verily believe.

I further state that the defendants are now residents of this State

and that personal service cannot be had on them in this State, and plaintiff asks an order of publication, as required by law.

EDWARD JOHNSTONE.

Subscribed and sworn to before me this December 12th, 1881.
In witness whereof I set my hand and seal notarial.

[NOTARIAL SEAL.] A. J. MATHIAS,
Notary Public.

27 We desire publication to be made in the Clay Co. News.

SOPER & CRAWFORD.

Order for publication of original notice herein made ordered in the Clay Co. News, a newspaper printed at Spencer, Clay Co., Iowa.

[SEAL C. C.] H. CHAMBERLAIN, *Clerk.*

EXHIBIT "A" with Contract.

Contract between Edward Johnstone, A. L. Connable, and C. F. Davis and William Leighton, parties of the first part, and E. R. Ford, party of the second part, witnesseth:

That for a good and valuable consideration the said party of the second part had the option of purchasing, for the period of sixty days from the date hereof, of the said first parties, the following described real estate, to wit: All in the State of Iowa, in Sioux county, sec. 36, twp. 94, R. 44, 640 acres; in Clay county, as follows:

Sec. 10, twp. 94, R. 36, 640 acres; sec. 18, twp. 94, R. 36, 624
28 acres; W. ½ sec. 8, twp. 94, R. 37, 320 acres; N. ½ & S. E. ¼ of sec. 13, twp. 94, R. 37, 480 acres; E. ½ sec. 17, twp. 94, R. 37, 320 acres; S. W. ¼ sec. 35, twp. 94, R. 37, 160 acres, upon the following terms, namely: If the said E. R. Ford or his assigns hereof shall in said sixty days deposit or cause to be deposited to the credit of said parties of the first part in the Keokuk Savings Bank of Keokuk, Iowa, the sum of fifty-eight hundred and seventy-six dollars or pay to them said amount, in said city of Keokuk, within said period of time, then the said parties of the first part (their wives joining) will make and deliver to the said second party or his assigns a deed of aforesaid warranty against the claims of all persons claiming by, through, or under them or either of them, conveying all of said lands hereinbefore described to said second party or his assign.

29 In testimony whereof the said parties hereto have hereunto subscribed their names this 17th day of February, 1875.

WM. LEIGHTON.
C. F. DAVIS.
EDWARD JOHNSTONE.
A. L. CONNABLE.
E. R. FORD.

STATE OF IOWA, } ss:
County of Lee, }

Be it remembered that on this 17th day of February, 1875, before me, William Ballinger, a notary public in and for said county, personally appeared Wm. Leighton, C. F. Davis, Edward Johnstone, A. L. Connable, and E. R. Ford, who are personally known to me to be the identical persons whose names are affixed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their voluntary act and deed.

In witness whereof I have hereunto subscribed my name and affixed my seal notarial the day and date above written.

WM. BALLINGER,
Notary Public.

30 Filed for record the 4th day of June, A. D. 1875, at 8 o'clock p. m.

A. H. CHENEY, *Recorder.*

For value received I hereby assign all my interest in the within option or contract, to which this is attached, to John A. Wallace.
Feb., 1875.

E. R. FORD.

Filed for record the 4th day of June, 1875, at 8 o'clock p. m.
A. H. CHENEY, *Recorder.*

And recorde- in Book I, page 277.

31 *Original Notice.*

STATE OF IOWA, } ss:
Clay County, }

In the Circuit Court of the State of Iowa, in and for Clay County.
Feb. Term, A. D. 1882.

EDWARD JOHNSTONE, A. L. CONNABLE, & C. F. DAVIS, Plaintiffs,

vs.

JOHN A. WALLACE & E. R. FORD, Defendants.

To the above-named defendants:

You are hereby notified that a petition is now on file in the clerk's office of the circuit court aforesaid in behalf of the above-named plaintiffs against you and claiming a decree forfeiting, re-cinding, and cancelling a certain contract in writing of Feb. 17th, 1875, concerning the following lands in the State of Iowa and quieting the title of the plaintiffs in and to said lands, namely: Section 36, township 94, range 44, containing 640 acres, in Sioux county, and section 10, township 94, range 36, 640 acres; section 18, township 94, range 36, 624 acres; W. ½ section 8, township 94, range 37, 320 acres; N. ½ & S. E. ¼ section 13, township 94, range 37,

32 480 acres; E. ½ section 17, township 94, range 37, 320 acres; S. W. ¼ section 35, township 94, range 37, 160 acres, in Clay county, Iowa.

And that unless you appear thereto and defend, before noon of the first day of the next regular February term of said court, to be begun and holden at Spencer, of the said court, which — on the 28th day of February, A. D. 1882, default will be entered against you and judgment rendered thereon as prayed for in said petition.

HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Plaintiffs.

STATE OF IOWA, }
County of Clay, } *ss:*

I, C. M. Whitman, of said county, being duly sworn, state that I am the present proprietor of the Clay County News, a newspaper printed and published at Spencer, in said county, and issued weekly, and that the annexed printed notice was regularly published
33 in said newspaper for four consecutive weeks, the first publication thereof being on the 13th day of January, 1882.

C. M. WHITMAN.

Subscribed and sworn to before me, at Spencer, in said county, this 28th day of February, 1882.

[Ackley Hubbard, Iowa, Notarial Seal.]

ACKLEY HUBBARD,
Notary Public.

(Endorsed:) 1926. Edward Johnstone *et al. vs.* John A. Wallace *et al.* Transcript from circuit court of Clay county. Filed April 15th, 1882. E. R. Mason, clerk. Circuit court, Clay county, Iowa. Filed Feb. 28th, 1882. H. Chamberlain.

34 And on the 18th day of April, 1882, the complainants, by Hagerman, McCrary and Hagerman, their solicitors, filed in said cause a præcipe for appearance; which said appearance is in the words and figures following, to wit:

35 *Præcipe for Appearance.*

In the United States Circuit Court, District of Iowa.

EDWARD JOHNSTONE, A. L. CONNABLE, & C. F. DAVIS, Plaintiffs,
vs.
JOHN A. WALLACE and E. R. FORD, Defendants. } No. —.

The clerk of said court will please enter our appearance for complainants in the above cause and docket the same on the equity docket.

HAGERMAN, McCRARY & HAGERMAN.

(Endorsed:) Johnstone *vs.* Wallace. Præ. for app. of compl'ts. Filed April 18, 1882. E. R. Mason, clerk.

36 And on the 22nd day of May, 1882, the complainants, by their solicitors, filed in said cause a motion for costs; which said motion is in the words and figures following, to wit:

37 *Motion for Costs.*

In the Circuit Court of the United States for the District of Iowa, Central Division, at Des Moines. In Equity.

EDWARD JOHNSTONE, C. F. DAVIS, A. L. CONNABLE, Plaintiffs,
against
JOHN A. WALLACE *et al.*, Defendants.

The complainants move the court to require the defendants to give security for costs in above cause—

1st. Because said defendant is a non-resident of this State (see pleadings) and in his answer asks affirmative relief.

2nd. And that security be given within ten days, because the time will soon expire when testimony can be taken. (See plead-
38 ings, which show that issues have been joined and when.)

HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Complainants.

(Endorsed:) Johnstone *et al. vs.* Wallace *et al.* Motion for security for costs. Filed May 22nd, 1882. E. R. Mason, clerk.

39 And on the 25th day of May, 1882, the defendant, E. R. Ford, by W. B. Collins, his solicitor, filed in said cause his answer; which said answer is in the words and figures following, to wit:

40 In the United States Circuit Court, District of Iowa, at Des Moines. Equitable.

EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS, Pl'ffs,
vs.
JOHN A. WALLACE & E. R. FORD, Def'ts.

1. Now comes E. R. Ford, and, for answer to the petition of the plaintiffs, shows that each and every and all of the allegations thereof are true; and for further answer says and avers that he has no right, title, and interest in the contract and conditional and optional sale copied in the petition, and has no right, title, or interest in the subject-matter of this suit or in the lands and real estate described in the petition, and has not had any such claim since he assigned the said conditional sale copied in the petition to
41 John A. Wallace, his codefendant.

2nd. He admits the truth of the allegations of the plaintiffs' petition contained in the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh counts or divisions of the plaintiffs' petition. Wherefore this defendant, E. R. Ford, prays to

be dismissed this suit with his costs, and prays that no costs shall be taxed against him in this proceeding.

E. R. FORD.

W. B. COLLINS, *Solicitor.*

STATE OF IOWA, } ss:
Lee County, }

I, E. R. Ford, having been duly sworn, on my oath say I have read the above answer and say the same is true, as I verily believe.

E. R. FORD.

Subscribed and sworn to before me by E. R. Ford this 12th day of February, A. D. 1882.

[W. B. Collins, Iowa, Notarial Seal.]

42 W. B. COLLINS,
Notary Public, Lee County, Iowa.

(Endorsed:) Filed May 25, 1882. E. R. Mason, clerk.

43 And on the 19th day of August, 1882, a stipulation of parties and order of court to open and file depositions was filed in said cause; which stipulation and order are in the words and figures following, to wit:

44 *Stipulation.*

In the Circuit Court of the United States for the District of Iowa, Central Division, at Des Moines.

EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS, Complainants,
against
JOHN A. WALLACE and E. R. FORD, Defendants.

In above case it is agreed 1st, that depositions of E. R. Ford and John A. Wallace and all other depositions in this cause may be opened at once by the clerk, marked, filed, and sent to the joint address, by express, of the counsel in this case.

HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Complainants.
CRAIG, COLLIER & CRAIG,
Solicitors for Defendants.

45 The clerk will please open, file, and send depositions to counsel of the parties in above cause, as per above stipulation.

August 7th, 1882.

GEO. W. McCRARY, *Judge.*

(Endorsed:) Johnstone *et al. vs.* Wallace *et al.* Stipulation and order to take deposition from files. Filed August 19, 1882. E. R. Mason, clerk.

46 And on the 28th day of October, 1882, a stipulation of parties as to submission was filed in said cause; which said stipulation is in the words and figures following, to wit:

47 *Stipulation.*

In the Circuit Court of the United States for the District of Iowa' Central Division, at Des Moines. In Equity.

EDWARD JOHNSTONE, A. L. CONNABLE, C. F. DAVIS
against
JOHN A. WALLACE, E. R. FORD.

1. It is agreed in above case that same may be submitted to the judges of said court at Keokuk during this term or in vacation, and that the decree may be signed and sent to the clerk of this court and entered of record as if rendered in open court at this term.

3. The counsel are to have reasonable notice of the time when the case shall be heard.

4. An order in conformity to this stipulation to be entered on filing of same at this term, Oct. 20, '82.

HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Complainants.
CRAIG, COLLIER & CRAIG, *for Def't-.*

(Endorsed:) Johnstone *et al. vs.* Wallace *et al.* Stipulation as to submission. Filed Oct. 28, 1882. E. R. Mason, clerk.

48 And on the 28th day of October, 1882, an order of court as to submission was filed in said cause; which said order is in the words and figures following, to wit:

49 *Order.*

In the Circuit Court of the United States for the District of Iowa, Central Division, at Des Moines. In Equity.

EDWARD JOHNSTONE, A. L. CONNABLE, C. F. DAVIS, Compl'ts,
against
JOHN A. WALLACE and E. R. FORD, Defendants.

By consent of parties it is ordered that this case be heard before the judges of this court at Keokuk, Iowa, at this term or during vacation, and the decree to be signed and entered as of this term; that the hearing of the case is to be had after a reasonable notice to the counsel of the parties.

Oct. 28, 1882.

GEO. W. McCRARY,
Circuit Jwdge.

(Endorsed:) Johnstone *et al. vs.* Wallace *et al.* Order as to submission. Filed October 28th, 1882. E. R. Mason, clerk.

50 And on the 13th day of May, 1883, the complainants, by Hagerman, McCrary and Hagerman, their solicitors, filed in said cause a replication to the answer of John A. Wallace; which said replication is in the words and figures following, to wit:

51 In the Circuit Court of the United States, Southern District of Iowa, Central Division, at Des Moines. In Equity.

EDWARD JOHNSTONE, C. F. DAVIS, and A. L. CONNABLE, Compl'ts,

vs.

JOHN A. WALLACE and E. R. FORD, Respondents.

The replication of Edward Johnstone, C. F. Davis, and A. L. Connable, complainants, to the answer of John A. Wallace.

1. These repliants, saving and reserving unto themselves all manner of advantage and exception to the manifold insufficiencies of the said answer of respondent, John A. Wallace, for replication thereto say that they will aver and prove their original bill to be
52 true, certain, and sufficient in law to be answered unto, and that said answer is uncertain, untrue, and insufficient to be answered unto; and therefore repliants deny each and every allegation thereof, except as herein admitted.

2nd. And these repliants, for further replication, do aver and say that the transactions of February 17th, 1875, set out in the original bill, in no wise or manner constituted a mortgage from which respondent Wallace or any one else is entitled to redeem.

3rd. That repliants, upon the purchase of the lands in controversy, together with one William Leighton, entered into the possession — same, and so continued to hold same until August 5th, 1875, from which time on repliants held the entire possession,
53 for that on said date said William Leighton, by deeds of warranty, duly acknowledged and recorded, together with his wife, for value, — sell and convey his undivided one-fourth interest in same to repliant, C. F. Davis; that said C. F. Davis, with his wife, upon August 6th, 1875, by deeds of warranty, duly acknowledged and recorded as required by law, conveyed for value the one-half of the interest of said land, as so purchased from said Leighton; that both said Johnstone and Davis purchased such interest without any notice whatever of any equities which would convert the transaction of February 17th, 1875, into a mortgage, and without any notice of the matters and things averred in respondents' answer, and they took same in perfect good faith.

54 4th. That these repliants, on the faith of their purchase and upon the faith of the failure of either of respondents to avail themselves of the option, have dealt with said lands as if they were not encumbered, have paid taxes on the same in the sum of $2,568.54, and have — large quantities of same to innocent purchasers, all of which was well known to said Wallace during all these years; yet while knowing same he never asserted any rights or made any claim under said option contract, nor did he ever claim

that there was any transaction in the nature of a mortgage until the 28th day of February, 1882, which was after the original bill herein was filed, and he ought therefore to be estopped from making any claim now, and his laches should in equity prevent him from now seeking to redeem; wherefore these repliants pray as their bill originally prayed.

HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Repliants.

(Endorsement:) Johnstone *vs.* Wallace. Replication to answer — John A. Wallace. Filed May 21, 1883, as of May 13, 1883, by stip. E. R. Mason, clerk.

55 And on the 13th day of May, 1883, the defendant, John A. Wallace, by Craig, Collier and Craig, his solicitors, filed in said cause his cross-bill of complaint against Edward Johnstone *et al.*; which said cross-bill is in the words and figures following, to wit:

56 In the Circuit Court of the United States in and for the Southern District of Iowa, Western Division. In Equity.

EDWARD JOHNSON, A. L. CONNABLE, and C. F. DAVIS, Complainants,

vs.

JOHN A. WALLACE and E. R. FORD, Respondents.

To the hon. judges of the circuit court of the United States for the southern district of Iowa, western division:

John A. Wallace, a citizen of the State of Missouri, brings this his cross-bill against Edward Johnston, A. L. Connable, & C. F. Davis, each citizens of the State of Iowa, and thereupon this respondent shows, first having leave of the court and consent of the parties complainant to file this cross-bill—

57 1. This respondent shows that the original bill filed by complainants her-in avers and alleges that complainants are the owners, by virtue of certain alleged deeds of conveyance executed by this respondent and wife to complainants and one Wm. Leighton, now deceased, of large tract of land situated in Clay and Sioux counties and State of Iowa, which lands are particularly and fully described in complainants' bill, and for such description reference is now here made to said bill; that at the date of the execution of the said al-eged deeds of conveyance complainants and Wm. Leighton executed to one E. R. Ford an alleged agreement or option by the terms of which said E. R. Ford might repurchase said realty set out and described at length in complainants' original bill by paying therefor a stipulated sum within sixty days.

58 2. This respondent shows and alleges that said deeds of conveyance and said contract to Ford were and constituted one transaction with this *this* respondent; that said contract to Ford was, before its delivery and before the closing up of said transaction, duly assigned to this respondent, and such assignment was well

known to complainants and Wm. Leighton; that in truth and in fact said E. R. Ford has no interest in said transaction, except that he acted as agent of this respondent in procuring for him a loan.

3. That said deed and contract was in truth and in fact executed not for the purpose and with the intent on part of complainants and Wm. Leighton and this respondent of conveying to complainants and said Wm. Leighton an absolute title to said realty
59 therein described, but for the purpose and with the intent on the part of all said parties to secure to said Wm. Leighton, Edward Johnson, A. L. Connable, and C. F. Davis the repayment to them of money borrowed from them at the date of said transaction, and said deed and contract, in truth and in fact, was given and said contract taken by this respondent as constituting to said complainant- & Wm. Leighton security for money loaned to this respondent, to wit, the sum of $3,600; all of which facts were well known to complainants and Wm. Leighton at the time of said transaction.

4. That the interest formerly held by Wm. Leighton in said security so given is now held by Edward Johnston and C. F. Davis.

60 5. That since the execution of the deed and contract aforesaid as security aforesaid the said Edward Johnston, C. F. Davis, and A. L. Connable have sold la-ge tract of said land and received therefor large sums of money and other valuable securities, and have conveyed away to innocent purch-ers large tracts of said lands, so that this respondent cannot have his equity of redemption in said lands so conveyed; that the amount of land so conveyed and the sums of money received by respondent therefor are largely in excess of the debt due the complainant- from this respondent, and largely in excess of the taxes paid by complainant- on said land and all legal interest due from this respondent to complainants.

61 6. That the debt due to complainants from this respondent and all legal interest on same has been fully paid and more than paid, and said complainants, upon an accounting, have in their hands a large sum of money due this respondent, and still hold the title to a large portion of said realty which in truth and in fact belongs absolutely to this respondent, free from all claim of complainants; but that complainants, pretending to be the absolute owners of said realty and of the proceeds of so much as has been sold, and conspiring together to wrong and defraud this respondent, absolutely refuses to account to this respondent for the proceeds of said realty so sold, and refuses to apply the proceeds thereof on respondent's debt, and refuses to reconvey to respondent the lands
62 unsold and still held by them, although often requested so to do; but they at all times pretend to be the absolute owners of said land and proceeds of land sold, and that this respondent has no interest or equity therein, and this respondent charges the contrary thereof to be the truth; all of which actings, doings, and pretenses of the said complainants are contrary to equity and good

conscience, and tend to the manifest wrong, injury, and oppression of this respondent in the premises.

In consideration whereof and forasmuch as respondent is entirely remediless in the premises, according to the rules of the common law, and can only have relief in equity; to the end, therefore, that complainants may come to a just and fair account with this respond-
63 ent and that the amount of this respondent's debt may be determined and adjusted between them; and that complainants may render a full, true, and correct account of the portion of said lands so sold and the moneys or other valuable things received by them therefor, and that such money and property be applied by them on this respondent's debt; and complainants may reconvey to this respondent the land unsold, and that in case he may be found still in any manner indebted to *to* complainants the amount of said indebtedness may be adjudged and charged upon the land unsold; and that this respondent may have the right to pay same, which he now and at all times stands and has stood ready and willing
64 to do and offers and proposes to do; and that this respondent may have such other and further relief in the premises as the nature of his case shall require and to your honors shall seem equitable—

May it please your honors to grant unto this respondent the writ of subpœna of the United States of America, to be directed to the said Edward Johnson, A. L. Connable, and C. F. Davis, commanding them and every of them, at a certain day and under certain pain therein to be specified, personally to be and appear before your honors in the honorable court, and then and there to answer all and singular the premises and to perform and abide such order and decree therein as your honors shall deem meet and as shall seem
65 agreeable to equity and good conscience; and your respondent shall ever pray.

CRAIG, COLLIER & CRAIG AND
H. C. NOYES,
For Respondent, Jno. A. Wallace.

(Endorsed:) Johnstone *vs.* Wallace. Cross-bill of John A. Wallace. Filed May 21, 1883, as of May 13th, 1883, by stipulation. E. R. Mason, clerk.

66 And on the 13th day of May, 1883, the defendants, Edward Johnstone *et al.*, by Hagerman, McCrary and Hagerman, their solicitors, filed in said cause their answer to the cross-bill of John A. Wallace, which said answer is in the words and figures following, to wit:

67 In the United States Circuit Court, Southern District of Iowa, Central Division, at Des Moines. In Equity.

EDWARD JOHNSTONE, C. F. DAVIS, A. L. CONNABLE
vs.
JOHN A. WALLACE & E. R. FORD. } On Cross-Bill.

Answer of Edward Johnstone, C. F. Davis, and A. L. Connable to the cross-bill of John A. Wallace.

These cross-respondents, saving and reserving unto themselves all manner of advantage and exception to the manifold insufficiencies of the said cross-bill, aver and say:

1st. They admit the citizenship of the parties as alleged.

2nd. They deny each and every allegation of said cross-bill nor hereinafter admitted.

68 3rd. That upon February 17th, 1875, the cross-complainant was the owner of the lands in controversy and described in the original bill, and upon said date he sold and conveyed same to these complainants and one William Leighton, each thereby acquiring an undivided fourth interest in same.

4th. That afterwards, upon the same day, one E. R. Ford, desiring to have an option of purchasing said lands, the grantees agreed that should he pay the sum of $5,876.00 within sixty days after that date they would convey said property to him.

5th. That cross-respondents are informed that said Ford afterwards assigned said option to cross-complainants, but no
69 such assignment was ever made until after the transactions hereinbefore set out.

6th. That neither said Ford nor cross-complainant nor any one for them ever paid or offered to pay any sum to purchase said lands within sixty days, and neither ever intimated a desire to purchase until the 28th day of February, 1882, after the institution of this suit on the original bill, nor did either ever before said last-named date offer, agree, or undertake to perform any of the conditions on his part in order to purchase.

7th. That said transactions did not constitute a mortgage, and cross-complainant is debarred by his laches from asking any relief.

70 8th. That these cross-respondents, with William Leighton, upon February 17th, 1875, took possession of all said lands and retained possession thereof until August 5th, 1875.

9th. That upon said last date, for value, by deeds of warranty duly acknowledged and recorded as required by law, said William Leighton, together with his wife, conveyed his undivided fourth interest in said lands to C. F. Davis, one of the cross-respondents, and upon the 6th day of August, 1875, said C. F. Davis, together with his wife, by deeds of warranty duly acknowledged and recorded as required by law, conveyed, for value, to cross-respondent, Edward Johnstone, one-half of the interest in
71 said lands so purchased from said Leighton.

10th. That both said Johnstone and said Davis purchased

such interest without any notice whatever of any equities which would convert the transactions of February 17th, 1875, into a mortgage and without any notice of the *of the* matters and things averred in cross-complainants' cross-bill, and they took same in perfect good faith.

11th. That ever since the purchase aforesaid cross-respondents have had possession of said lands; they have paid taxes on same to the amount of $2,568.54, and in good faith, without any knowledge of any claim by cross-complainant, cross-respondents have sold large portions of said lands, all of which is shown by an
72 itemized statement thereof, hereto attached, marked Exhibit "A," and made part hereof.

12th. That, although cross-complainant at all times well knew of the facts herein averred, he never made any claim that the transactions of February 17th, 1875, amounted to a mortgage or that he had any interest in said lands until February, 1882, and he ought, therefore, to be estopped from claiming the matters prayed for in said cross-bill, and his laches should debar him from relief.

All of which matters and things these cross-respondents stand ready to prove, and, having fully answered, ask to be allowed to go hence with their costs.

HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Cross-Respondents.

73 *Disposition of Land Purchased of John A. Wallace and Wife Feb. 17th, 1875, by Edward Johnstone, A. L. Connable, & C. F. Davis.*

In Clay county Iowa:

All of sec.	10–94–36,	640	acres, sold	Nov. 21, '81,	at $5.00 per acre.
N. W. ¼ "	18–94–36,	160	acres, sold	Apr. 30, '81,	at $5.00 per acre.
S. E. ¼ "	18–94–36,	160	" "	Apr. 30, '81,	" $5.00 per acre.
S. W. ¼ "	18–94–36,	160	" "	Oct. 23, '80,	" $5.00 "
N. E. ¼ "	18–94–36,	144	" not yet sold.		
W. ½ "	8–94–37,	320	" sold	Apr. 30, '81,	at $7.00 per acre.
N. ½ "	13–94–37,	320	" "	Oct. 6, '80,	" $6.00 "
S. E. ¼ "	13–94–37,	160	" "	June 30, '81,	" $4.50 "
N. E. ¼ "	17–94–37,	160	" "	March 30, '81,	" $7.00 "
S. E. ¼ "	17–94–37,	160	" "	Apr. 30, '81,	" $7.00 "
S. W. ¼ " acres.	35–94–37,	160	{ 80 acres, sold { 80 acres "	March 7, '80, May 7, '80,	at $5 per acre. at $4.00 "

In Sioux county:

All of sec. 36–94–44, not yet sold.

Exhibit "A" to answer to cross-bill.

(Endorsed:) Johnstone *et al. vs.* Wallace *et al.* Answer to cross-bill. John A. Wallace. Filed May 21, 1883, as of May 13, 1883, by stipulation. E. R. Mason, clerk.

74 And on the 16th day of May, 1883, the cross-complainant, John A. Wallace, by Craig, Collier and Craig, his solicitors, filed in said cause his replication to the answer to cross-bill; which said replication is in the words and figures following, to wit:

75 In the Circuit Court of the United States for the Southern District of Iowa, Middle Division. In Equity.

EDWARD JOHNSTONE *et al.*, Plaintiffs,

vs.

JOHN A. WALLACE and E. R. FORD, Respondents.

The replication of John A. Wallace to the answer of plaintiffs to his cross-bill.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the answer of complainants to his cross-bill, for replication thereunto, saith that he will aver and prove his said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the answer thereto by plaintiffs is uncertain, untrue, and insufficient in the law to be replied unto by this repliant, save and except that this repliant doth admit that the statement of lands sold and taxes paid
76 and the dates and amounts of receipts for said sales, with the taxes paid on said lands in complainants' bill described, is true and correct, without that, that there is any other matter or thing in the said complainants' answer contained material or effectual for this repliant to reply unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things, save and except as aforesaid, this repliant is ready to aver and prove as this court shall award; and prays as in his original cross-bill he hath prayed.

CRAIG, COLLIER & CRAIG &
H. C. NOYES,
Atty's for John A. Wallace.

(Endorsed:) Johnstone *vs.* Wallace. Replication to answer to cross-bill. Filed May 16, 1883. E. R. Mason, clerk.

77 And on the 16th day of May, 1883, the complainants, by their solicitors, filed in said cause a motion to strike — portions of the testimony; which said motion is in the words and figures following, to wit:

78 *Motion.*

In the Circuit Court of the United States, Southern District of Iowa, Central Division. In Equity.

EDWARD JOHNSTONE, C. F. DAVIS, and A. L. CONNABLE
vs.
JOHN A. WALLACE and E. R. FORD. } Original Bill.

JOHN A. WALLACE
vs.
EDWARD JOHNSTONE *et al.* } Cross-Bill.

Now come Edward Johnstone, C. F. Davis, and A. L. Connable, complainants in the original bill and respondents in the cross-bill, and move the court to strike out the following portions of the testimony:

1. So much of the testimony of E. R. Ford as details conversations with William Leighton when complainants were not present, and so much of the testimony of this witness as details con-
79 versations with John A. Wallace, because same is incompetent, irrelevant, and immaterial, hearsay, and relates to business transactions and communications with William Leighton, who is now deceased, and is not binding on complainants.

2. So much of the testimony of William Ballinger as relates to conversations with E. R. Ford and John A. Wallace when complainants were not present, as incompetent, irrelevant, and immaterial, as hearsay, & as detailing a communication from client to attorney.

Also so much of the testimony of said Ballinger as attempts to give conversations with or statements by Wm. Leighton as incompetent, irrelevant, immaterial, hearsay, & not binding on complainants.

3. So much of the testimony of John A. Wallace as de-
80 tails conversation with E. R. Ford and Wm. Ballinger, as incompetent & irrelevant, immaterial, and as hearsay.

Also so much of the testimony of said Wallace as attempts to detail conversations with William Leighton, as incompetent, immaterial, irrelevant, *immaterial*, as hearsay & not binding on complainants, & because it purports to be a personal communication with said Leighton, now deceased, by a party to this action.

HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Complainants & Cross-Respondents.

(Endorsed:) 1926. Johnstone *vs.* Wallace *et al.* Motion to strike — testimony. Filed May 16, 1883. E. R. Mason, clerk.

81 And on the 21 day of May, 1883, a stipulation as to filing papers was filed in said cause; which said stipulation is in the words and figures following, to wit:

82 *Stipulation.*

In the Circuit Court of the United States for the Southern District of Iowa, Western Division, at DesMoines.

EDWARD JOHNSON *et al.*
vs.
JOHN A. WALLACE and E. R. FORD, Respondents.

It is stipulated that the cross-bill hereto attached may be considered by the court at the hearing as if filed by the clerk, and on presentation to him may be marked filed as of this date, May 13th, 1883, and in like manner the answer and replication thereto and the replication on original case; that complainants waive the issuance of process on said cross-bill and now hereby enter their appearance thereto, and that the cause shall be submitted and heard upon the issues made in the original bill, answer, and replication & this cross-bill and answer thereto, and that the evidence of —— may be taken at once by respondent upon the allegations of said cross-bill and used on trial.

HAGERMAN, McCRARY & HAGERMAN,
For Complainants.
CRAIG, COLLIER & CRAIG,
For Respondents.

83 (Endorsed:) Johnstone *vs.* Wallace. Stipulation as to filing papers. Filed May 21, 1883. E. R. Mason, clerk.

84 And on the 16th day of May, 1883, it being of the May term, 1883, of said court, in the record of the proceedings thereof is an entry of final decree in said cause; which said decree is in the words and figures following, to wit:

85 *Decree.*

United States Circuit Court, Southern District of Iowa, Central Division. May Term, 1883.

EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS *vs.* JOHN A. WALLACE and E. R. FORD. } Eq. No. 1926.

JOHN A. WALLACE, Cross-Complainant, *vs.* EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS, Defendants. } Cross-Bill.

WEDNESDAY, *May* 16, 1883.

This cause came on to be heard at this time; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

1st. That on the 17th day of February, 1875, the said John A. Wallace was the owner in fee simple of the following-described real estate, lying and being in the State of Iowa, to wit: Section thirty-six (36), township ninety-four (94), range forty-four (44), containing 640 acres, in the county of Sioux, and also section ten (10), township ninety-four (94), range thirty-six (36), containing 640 acres; section eighteen (18), township ninety-four (94), range thirty-six (36),
86 containing 624 acres; west half of section eight (8), township 94, range 37, containing 320 acres; north half and southeast quarter section 13, township 94, range 37, containing 480 acres, and the east half of section seventeen, township 94, range 37, containing 320 acres, and southwest one-fourth section thirty-five, township ninety-four, range 37, containing 160 acres, all in the county of Clay; and on said day the said Wallace and his wife duly conveyed said lands, for a valuable consideration, by two deeds of general warranty, one for the lands in Clay county and the other for the land in Sioux county, to Edward Johnstone, A. L. Connable, and C. F. Davis and one William Leighton, one of which deeds was duly filed for record in the records of deeds of Sioux county on the 12th day of March, 1875, and recorded in Deed Book G, at page 59, and the other duly filed for record in records of deeds in Clay county on the 26th day of February, 1875, and recorded in Deed Book I, at page 191; and thereby the said grantees became the owners in fee simple of said lands, each owning an undivided fourth interest therein.

2nd. That on August 5th, 1875, the said Wm. Leighton conveyed his undivided one-fourth interest in said lands to the said C. F. Davis by two deeds duly executed and delivered and recorded, one
87 for the above lands in Clay county, recorded in Book I, page 336, of Deed Records of Clay county, and the one for the above lands in Sioux county recorded in Book G, page 248, of Sioux county.

3rd. That on August 6th, 1875, the said C. F. Davis conveyed an undivided one-half of the undivided one-fourth of the said lands acquired by him from said Leighton to the said Johnstone by two deeds duly executed and acknowledged and duly recorded, the one for the above lands in Clay county in Book I, page 356, of Deed Records of Clay county, and the one for the above lands in Sioux county recorded in Book G, page 285, of Deed Records of Sioux county.

4th. That after the said conveyance by Leighton to Davis and from Davis to Johnstone the said lands were owned in fee simple by the said Johnstone, Davis, and Connable, the said Johnstone owning an undivided three-eighths thereof and the said Davis an undivided three-eighths thereof and the said Connable an undivided one-fourth thereof.

5th. That on the 17th day of February, 1875, the said Johnstone, Davis, Connable, and Leighton, as parties of the first part, executed and acknowledged and delivered to the said E. R. Ford, as party of the second part, their certain contract in writing, whereby,
88 for a valuable consideration, they contracted and agreed to give the said E. R. Ford or his assigns the option of purchasing said lands for sixty days thereafter, provided within said sixty days the said Ford or his assigns should deposit or cause to be de-

posited in the Keokuk Savings Bank of Keokuk, Iowa, the sum of $5,876.00, or pay them said amount in said city of Keokuk within sixty days; which option contract was subsequently assigned by said Ford to said Wallace and thereafter recorded in the Records of Deeds of Clay county on the 4th day of June, 1875, in Book I, page 277, and in Sioux county in Book —, page —.

6th. That neither the said Ford nor the said Wallace, nor any one for them, paid or offered to pay said money within the sixty days provided in said contract or at any time before the commencement of this suit.

7th. That by reason of the failure of said Ford and the said Wallace to pay said money, as provided in said contract, within the time therein prescribed all of their right, title, or interest, or those claiming under them, in said contract or in said lands became and were and are forfeited and should be and are held for naught, and the said contract is hereby cancelled and annulled.

89 8th. That the said Johnstone, Davis, and Connable, and those claiming under them, are the owners of the said lands, and neither the said Ford nor the said Wallace *have* any interest therein, and the title to the said lands is hereby quieted in the said Johnstone, Davis, and Connable, and those claiming under them, forever, as against the claim of the said Ford or the said Wallace, or any one claiming under them, by and through said option contract.

9th. That the cross-bill of said Wallace be dismissed, and that he be ordered to pay all the costs of this suit, taxed at —— dollars, and that execution may issue therefor.

To which rulings, findings, judgment, and decree defendant and cross-complainant, John A. Wallace, duly excepted at the time and filed his petition praying the allowance of an appeal of this cause to the Supreme Court of the United States; and, upon consideration of said petition, the said John A. Wallace is duly allowed an appeal of this cause, and the supersedeas bond required of him is hereby fixed at five hundred dollars.

(Signed) GEO. W. McCRARY,
Circuit Judge.

90 And on the 16th day of July, 1883, an appeal bond was filed in said cause; which said appeal bond is in the words and figures following, to wit:

91 *Appeal Bond.*

The Circuit Court of the United States for the Southern District, Eastern Division, of Iowa.

EDWARD JOHNSTONE, C. F. DAVIS, A. L. CONNABLE
vs.
JOHN A. WALLACE & FORD.

Know all men by these presents that we, John A. Wallace, —— ——, are held and firmly bound unto Edward Johnstone, C. F. Davis,

and A. L. Connable, of the city of Keokuk, Lee county, Iowa, in the sum of five hundred (500) dollars, to be paid to the said Edward Johnstone, C. F. Davis, and A. L. Connable, their executors and administrators.

To which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

92 Sealed with our seals. Dated this 18th day of June, A. D. 1883.

Whereas the above John A. Wallace has prosecuted an appeal to the Supreme Court of the United States to reverse a judgement and decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Iowa, eastern division:

Now, therefore, the condition of this obligation is such that if the above-named John A. Wallace shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN A. WALLACE.
AUGUSTUS NEWMAN.

Approved:
GEO. W. McCRARY,
Circuit Judge.

93 The Circuit Court of the United States for the Southern District, Eastern Division, of Iowa.

EDWARD JOHNSTONE, C. F. DAVIS, A. L. CONNABLE
vs.
JOHN A. WALLACE & FORD.

Augustus Newman, being duly sworn, upon oath says that he is the owner of the following-described real estate situated in the State of Iowa, to wit, the southeast quarter and the east half of southwest quarter of section six, township eighty-eight, range thirty-three, Calhoun county, Iowa, and other real estate situated in same county; that said real estate is worth over twelve hundred dollars.

Appliant further says that he is worth over twenty-five thousand dollars above all his debts and liabilities.

AUGUSTUS NEWMAN.

94 Subscribed and sworn to before me this 18th day of June, A. D. 1883.

[Notarial Seal, Henry Noyes, Cook County, Ills.]

HENRY C. NOYES,
Notary Public.

(Endorsed:) Edward Johnstone, C. F. Davis, A. L. Connable *vs* John A. Wallace & Ford. Appeal bond. Filed July 16, 1883. Ed. R. Mason, clerk.

95 And the complainants, to sustain the issues in their behalf, introduced upon the hearing in said cause the following testimony, to wit:

96 In the Circuit Court of the United States in — for the — District of Iowa, Central Division, at Des Moines.

EDWARD JOHNSTONE *et al. vs.* JOHN A. WALLACE *et al.*

Appearances: For complainants, Messrs. Hagerman, McCreary & Hagerman; for respondents, Messrs. Craig, Collier and Craig and Henry C. Noyes.

UNITED STATES CIRCUIT COURT CHAMBERS,
KEOKUK, IOWA, *August* 23, 1883.

In pursuance of the stipulations attached to the depositions of E. R. Ford and others heretofore in this case taken on the part of defendant, John A. Wallace, came before me, Fred. P. Barnett, a notary public in and for the county of Lee, in the State of Iowa, Ed-
97 ward Johnstone, C. F. Davis, C. P. Birge, and A. L. Connable, who, being duly sworn and examined, deposed as follows:

Depositions on the Part of Complainants.

EDWARD JOHNSTONE, called on part of complainants, having been duly sworn, deposes as follows:

Direct examination by Mr. HAGERMAN:

1. What is your name, age, place of residence, and occupation?

A. Edward Johnstone; age, 67—66 or 67—67 I will say; I am at present cashier of the Keokuk Savings Bank, and reside at Keokuk.

2. How long have you lived in Keokuk?

A. Well, I have lived here 14 or 15 years, but in the county something over forty years.

3. Are you one of the complainants in this case?

A. Yes, sir; I am.

4. Where were you living in the month of February, 1875?

A. In the city of Keokuk.

98 5. Where was your co-complainants, Al. Connable and C. F. Davis, living at that time?

A. Residing in this city—in the city of Keokuk.

6. Do you know the defendants, John A. Wallace and E. R. Ford?

A. I do.

7. Where were they living in February, 1875?

A. I don't know, except from information. I understood that they were living in the city of St. Louis, Mo.

8. Did you and your co-complainants and one William Leighton purchase the lands described in the petition in this case from the defendant, John A. Wallace?

Objected to as incompetent—asking for a conclusion of the witness.

A. We did.

9. State all the facts and circumstances under which such purchase was made. State fully.

A. I will endeavor to state it as briefly as I can. In the
99 early spring of 1875, Col. Wm. Leighton, who is now dead, told me that he knew of a considerable body of lands in Northwestern Iowa that could be purchased at a low figure, and inquired if I would join him and others in making such purchase. I answered that I would, provided that the title was all right and the price satisfactory. In February, 1875, John A. Wallace and Dr. E. R. Ford, the defendants in this case, came to Keokuk, and I learned from them that they were the persons that had those lands for sale. Ford came here not as the owner of the land, but as an agent or for the purpose of assisting Wallace in making the sale. Wallace claimed to be the owner of the land. Mr. Wallace told us that he was very hard up for money; that he would sell the lands very cheap,
100 and could afford to do so, because he had bought them very cheap. He said that he had bought them—paid for them—in Missouri. I don't know whether he called it war warrants or war script which at that time could be purchased in St. Louis, Mo., for about five cents on the dollar. If it were not digressing, I could say that, acting on this information, Mr. C. F. Davis authorized Dr. Ford to purchase some of this scrip, and that he bought $40,000 worth at that price—for five cents on the dollar—for several parties here, among which I took $4,000 myself, for which I paid $200, and I have never been able to dispose of it myself since at any price. Mr. Wallace, I think, had within a satchel which he carried in his hand when he came to the Keokuk Savings Bank—I think he
101 had with him the deeds to these lands, and also the abstracts of title; and Mr. Leighton, who was familiar with the lands in the northwestern part of Iowa, being a large owener of lands there himself and having the leisure to do it, went with Mr. Wallace to Major Collins' office, or his own office (they were officing together), for the purpose of examining these abstracts and these deeds. There were several. I think Mr. Wallace and Ford were here several days. I don't remember how long they were here, and finally we concluded to purchase these lands at about $1.50 an acre —the land in Clay county and the lands in Sioux county. I hesitated about making the purchase so far as I was concerned
102 myself. I had heard some rumors about Mr. Wallace that were not favorable to him, and I did not care really about making a purchase from him, but Dr. Ford, who had some reputation here and was respected here, seemed to be anxious to get an option on these lands, and offered to take an option to repurchase the lands from us again, provided we gave him sixty days' time. He agreed to pay, I think, $5,876 in the Keokuk Savings Bank here, and that offer had more effect upon me than anything else, and determined me to make the purchase, because I had confidence in

the doctor's judgment. We met in the Keokuk Savings Bank. There was Mr. Davis, Mr. Connable, John A. Wallace, Dr. Ford, and myself, and we consummated the arrangements there. He
103 delivered to us the deeds—there were two deeds—one for the lands in Clay county and one for the lands in Sioux county, and a power of attorney from his wife. Those are the papers, and we delivered to Dr. Ford an option paper, which has been filed in this case, and at the same time we gave to Mr. Wallace another paper. It seems that there was something defective in the deed from D. W. Kilbourne to Mr. Wallace, and it was uncertain whether the taxes were paid in these counties on the lands, and we withheld. We paid him $3,500 in cash, and withheld $1,376 until the deed from Kilbourne was corrected, and until we ascertained that the taxes were all paid in these counties. After the deed was
104 corrected, and after we ascertained that the taxes were paid, the amount of $1,376, after deducting the expenses of recording some deeds which Mr. Wallace had not recorded—the deed from Palmer to him and the deed from Kilbourne to him—and also, I think, the power of attorney—after deducting those expenses, the balance of the $1,376 was paid over to Mr. Ballinger in three seperate payments, Mr. Ballinger signing himself as attorney for Mr. Wallace. The amounts were paid as follows: May 10th, 1875, $800; May 27th, 1875, $107; and then the balance of $459.44, paid June 4th, 1875.

10. I will ask you to state at this point in your testimony when and where the final agreement was made which preceeded the execution of the papers?

105 A. Well, my best recollection is that we came to the final agreement in the Keokuk Savings Bank.

11. And who were present at that time?

A. All the parties—Wallace, Leighton, Ford, Connable, Davis, and myself. There were no other persons present.

Complainants here offer in evidence, in connection with the testimony of this witness, the following original papers, to be copied by the notary and the copies to be made part hereof and marked as follows: Exhibit 1, deed of Wallace and wife to Johnstone and others, for lands in Sioux county; Exhibit 2, deed from the same parties to the same parties for lands in Clay county, Iowa; Exhibit 3, power of attorney from Mrs. Wallace to John A.
106 Wallace; Exhibit 4, letter of Leighton, Davis, Johnstone, and Connable to John A. Wallace, stating agreement, with the receipts on the back thereof.

I probably ought to say that this attachment here to the Exhibit 4, by way of explanation, was not made at the time that this paper, Exhibit 4, was made, but it was made at the time of the final accounting by Leighton, showing the balance that was due. The date of the final accounting is there, June 4th, 1875. It was then paid over to Mr. Ballinger, the amount was.

12. In whose handwriting is Exhibit 4?

A. All except the signature is in the handwriting of Col. Leighton.

13. That is, you mean the body of the letter is in the handwriting of Col. Leighton?

107 A. Yes, sir; the receipts on the back of it are in three different handwritings signed all by Mr. Ballinger, as attorney for Wallace.

14. Now, you may proceed with your statement.

A. I believe I have stated that the option was delivered at the time to Dr. Ford. I would desire to say in that connection that I don't think my best recollection is that the paper was not acknowledged at the time that it was signed, but that subsequently the notary, Wm. Ballinger, came into the bank and inquired of us, without taking the paper into our hands, whether it was all right, and we said, Yes; and I supposed he wrote out the certificates of acknowledgement afterwards. Upon the purchase of these lands we went into the possession of them and we paid taxes on

108 them and sold a portion of them, and I never heard anything of any claim of Mr. Wallace of this being a loan until I saw it set up in his answer in this case. I want to further state in this case that in December, I think it was, in 1881, our agent for the lands in Clay county wrote me that this option contract was of record there and that it might have some effect on the sale of the land—might be considered as a cloud upon the title; and also that this option contract had been assigned—the record showed that it had been assigned—to Wallace. According to my best recollection, that is the first I ever heard of this assignment of the option contract to Wallace.

Defendant here objects and moves to strike out the state-

109 ment of the witness as to the contents of letters from plaintiff's agent in regard to the assignment, because the same is not the best evidence and because it is immaterial, incompetent, and irrelevant.

I was very much surprised at the information, and submitted the matter to Hagerman, McCrary & Hagerman, and upon examination they informed me that the paper had no legal effect whatever; but for fear that it might interfere with the sale of the lands and might prove a cloud upon the title and would be rather inexpensive, we thought it would be better to commence a proceeding to quiet title. Acting upon that advice, we commenced the present proceeding, and the parties, the defendants, being non-

110 residents, notice — given by publication in the newspapers, and the answer of Wallace was filed. That was the first that I had ever heard of his claim that this was a loan which was made to him.

Counsel for defendants objects to that part of the above answer, and moves to strike out the same, which gives the communications between the attorney and client as hearsay and incompetent.

15. I will ask you to state whether or not you or your co-com-

plainants or Mr. Leighton ever had any conversation with Mr. Wallace, preceding or at the time of the execution of these papers, in reference to making him a loan upon these lands?

A. I can say for myself that I talked of Mr. Wallace and
111 Dr. Ford several times on the subject, as they were here two or three days, but I never heard from Dr. Ford or Mr. Wallace that he wanted a loan; there was never such a thing as a loan intimated. I never heard anything from them except that they wanted to sell the lands. Wallace wanted to sell the lands and get money for them because he needed it badly. The subject of loan was never intimated.

16. Did you ever hear Mr. Leighton say anything on the subject?

A. Never. I talked frequently to Mr. Leighton and Mr. Davis and Mr. Connable, and I never heard a word said that would intimate that a loan was desired by Mr. Wallace; it was all with reference to the purchase of these lands.

112 17. Please state, in a general way, what you and Mr. Leighton and Mr. Davis and Mr. Connable knew about the lands in Northern Iowa, in and about the counties in which these lands in controversy are, prior to or at the time that you made the purchase of Wallace.

A. I knew something about the lands there because I had purchased in connection with others. Judge Love and Mr. Davis and I purchased through the agency of John Elliott a very large body of — up there—I forget how many thousand acres—and Judge Love and I bought some lands in Kossuth county, and Mr. Davis and I bought some land, I can't say how many acres; but I
113 was pretty well acquainted with the subject of these lands—the Des Moines Valley railroad lands they were called—and I know that Mr. Leighton was very largely interested, being a large holder of land himself up there which he had received from the railroad company, and seemed to be very well acquainted with the lands in that region. I don't know about Mr. Davis and Mr. Connable.

18. Were these lands that Wallace had part of the Des Moines river lands?

A. Yes, sir; not the Des Moines river lands, either. I think they were lands that were deeded to the Des Moines Valley Railroad Company. Des Moines river lands were in a different country. We bought about 2,554 acres of land in Clay county from Mr. Wallace and 640 acres in Sioux county. The lands in Clay
114 county were about—I think there were about 1,000 acres of them that were never sold, and we never had an offer for them. They were, some of them, very broken lands and still remain unsold, and the land in Sioux county remains unsold also. I don't know whether I might add the prices paid for land. We paid about $1.50 an acre for it. I think the whole amount makes a little over $1.50 an acre. We had agreed upon a round sum—$4,876—for 3,194 acres. Mr. Davis and I and others purchased from John D. Crafton, in March, 1875, 2,880 acres of land in the counties of Buena Vista, Clay, and Dickinson for $1.50 an acre—some

of the lands adjoining these lands which Wallace sold us—
115 and I think, as a whole, that the lands we bought from Crafton were better than the lands we bought from Wallace.

19. Please state what relations the associated purchasers of this land sustained to the Keokuk Savings Bank at the time that you made the purchase.

A. Mr. Connable and Mr. Davis and myself were all interested in the bank, but Mr. Leighton never had any connection with it in any way, except as an occasional borrower of money.

Here counsel for defendants moves to strike out the question and answer as incompetent, irrelevant, and immaterial.

I might add to that that, so far as I was personally concerned, I never was a money-lender, and I know that Mr. Leighton
116 never loaned any money. Mr. Leighton was always a borrower of money. He was a great buyer and seller of real estate, but a man that never loaned any money; never had any. Mr. Davis and Mr. Connable will be here to answer for themselves.

Here counsel for defendants moves to strike out the answer of this witness as to the habits of himself and Mr. Leighton as incompetent, irrelevant, and immaterial, having no bearing upon this transaction.

20. Did the Keokuk Savings Bank as a bank have anything to do with this purchase from Wallace?

A. The only thing that the savings bank had to do with it was to lend the money to Mr. Connable, Davis, myself, and Leighton. We paid Mr. Wallace $3,500 in cash and we borrowed the
117 money from the bank and executed our note, signed by ourselves individually, for the money. The bank itself as a corporation had nothing to do with the purchase, but loaned the money to the purchasers as to any other persons making good paper.

21. I will ask you to state whether or not you and those associated with you in the purchase of this land, so far as you know, would have loaned money on this land at that time or loaned money on that kind of security.

Counsel for defendants here objects to the question as hypothetical and incompetent, irrelevant and immaterial.

22. I will ask you to state whether or not there was any agreements other than those expressed in the four exhibits which
118 you have introduced and in the paper called the option paper introduced by the defendan-, John A. Wallace, between you and Mr. Wallace with reference to these lands.

A. At the time of the consummation of this purchase the only papers that ever passed between the two parties were the two deeds made by Wallace to us, one for the lands in Clay county and the other for the lands in Sioux county, accompanied by the power of attorney of his wife, the option papers which were handed to Dr. Ford, and the paper which was handed to Mr. Wallace in regard to

the defective deed of Kilbourne and the unpaid taxes. Those were the only papers that were passed and contained the whole of the arrangement that we had with Mr. Wallace for the purchase
119 of these lands, and there was — other arrangement, oral or otherwise, ever made.

23. What became of Mr. Leighton's interest in these lands?

A. Mr. Leighton, I think, in August, 1875, sold his interest in the lands to Mr. Davis, who subsequently sold one-half of that interest to me. Mr. Davis has the deed, I believe. Mr. Davis has the deed to him. I have the deed from Mr. Davis to me.

24. You had better introduce those deeds to you.

A. Here they are.

Here counsel for complainants offers in evidence the following deeds, copies of which are to be made by the notary and attached as exhibits, as follows: Exhibit 5, deed from Wm. Leighton and wife to C. F. Davis for lands in Sioux county; Exhibit 6,
120 from the same parties to the same parties for lands in Clay county; Exhibit 7, from Davis and wife to Edward Johnstone, an undivided one-eighth of the lands in Sioux county; Exhibit 8, same parties to same party for an undivided one-eighth of the lands in Clay county.

25. I see in these deeds conveying the lands in Clay county there are other lands described than those in the deed of Wallace to yourself and others. Just briefly explain that.

A. Well, the same parties purchased other lands in Clay county from John D. Crafton. Mr. Leighton owned the one-fourth of that, and his deed to Davis covers the lands he purchased from Crafton as well as the lands purchased from Wallace.

26. State whether or not Ford or Wallace or any one for
121 them ever paid or offered to pay the amount specified in the option contract within the time therein specified.

A. They never did. I may add, too, in that connection that from the date of the purchase until I saw Wallace's answer in this case, I never saw Wallace and never heard from him on the subject. I saw Dr. Ford several times every year since the transaction, and he never referred to the subject.

27. State what was the relation between you, Mr. Leighton, Mr. Davis, and Mr. Connable, with reference to this land transaction, as to any existing agency between you.

A. Mr. Davis and myself had been connected in some purchases of lands prior to that time, and Mr. Connable and Mr. Leigh-
122 ton and Mr. Davis and myself were connected in one other purchase, the purchase from Crafton; and beyond that, why I never had any connection with either of the gentlemen. The truth is, we acted—at least I did—for myself. I had no association or connection with those gentlemen about buying lands or anything else, except in these particular instances, and in those I acted for myself, and authorized no man to loan any money for me or purchase any lands for me. I did that myself. Nobody had any authority to do anything of that kind for me.

28. Had Mr. Leighton any authority to take a contract of purchase or contract of loan for you?

123 A. None in the world.

Cross-examination by Mr. COLLIER:

29. How long before the transaction between yourself and Ford and Wallace did you hear that these lands might be purchased?

A. I think it was probably—I can't speak certainly—but probably a month or two. It was some time in the early spring, as I said, of 1875.

30. Who did you hear it from?

A. I heard it from Col. Leighton.

31. Did he tell you at that time who had the title?

A. I don't remember that he did; I don't think he did.

32. Where was the first conversation that you had in regard to these lands, at or about the transaction, and who were present?

124 A. Well, I think the first conversation I had was in the Keokuk Savings Bank, and I think the first conversation I had was with Dr. Ford. Dr. Ford seemed to be the active agent in making the negotiations to it.

33. Did you ever have any conversation whatever with Wallace about this option that was given in the transaction?

A. Never.

34. Did Wallace see the paper prior to its delivery?

A. That I don't know. Well, the option was given; was delivered at the time of the delivery of these deeds; given to Dr. Ford. He was there and Mr. Wallace saw it then.

35. Mr. Wallace was present when it was given?

125 A. Mr. Wallace was present, because the parties were all present when these deeds were delivered and these different papers were delivered.

36. Do you recollect who wrote that option paper?

A. No; I do not; it was acknowledged—it was subsequently acknowledged before Mr. Ballinger, I think. My recollection is that it was probably written by Mr. Leighton, who had drawn up the other papers.

37. At the time that you took the title it came direct from Wallace?

A. It came from Wallace.

38. Did Mr. Ford, in his conversations with you, claim that he individually desired this option?

126 A. That is what I understood. I never knew that Mr. Wallace wanted an option. I don't think that I would have made the purchase if an option had been given to Wallace just for fear of some future complication.

39. The option was to Mr. Ford and his assigns?

A. Of course.

40. Didn't you know that that paper was assigned to Wallace before ever the transaction was consummated?

A. I did not.

41. And that Wallace held it at the time that the papers were actually exchanged?

A. I had no recollection of knowing anything about that assignment until I heard from our agent in Clay county, Mr. Hoskins.

42. How long after that did you purchase lands from Crafton?

A. I think it was in March, 1875.

43. When you purchased Mr. Leighton's interest, in August
127 of that year, you gave him three dollars an acre for his interest?

A. I don't know what it was. I suppose the consideration in the deeds shows the correct amount.

44. These lands that you purchase from Crafton were lands of the same character?

A. They were of the same kind and belonged to the same purchase.

45. And when the lands were purchased from Crafton you gave him an option also, did you not?

A. I gave Dr. Ford an option.

46. And afterwards Mr. Crafton held that option, did he not?

A. I don't know anything about that; the option was delivered by Dr. Ford.

47. And how much did you pay for that?

A. Nothing. Dr. Ford in his testimony—I will explain. We didn't pay anything; that is the answer; but I will explain
128 that the option was given to Dr. Ford and the cancellation was made by Dr. Ford. Crafton had nothing to do with it.

48. There was no money paid either to Ford or Crafton for the cancellation?

A. No, sir; but what I was going to say was we withheld about, I think it was, $1,329 in the Crafton purchase until we found certain taxes were paid, and advanced so much on the deeds, and when we found that it was all right, then we paid the $1,329 to Mr. Crafton.

49. And at that time was the option surrendered?

A. The option was surrendered on that very day. I have got his receipts here and the cancellation of the option.

129 50. You say there was no money paid, either directly or indirectly, for the cancellation of that option either to Ford or to Crafton?

A. Not to my recollection, sir. I have no recollection of any money ever being paid.

51. Was there any conversation in regard to this option had between the parties in the Keokuk Savings Bank at the time of the closing of the transaction or at any other time—that is, in a general way?

A. I take it for granted, although I couldn't state positively, that there was some conversation, because Dr. Ford expressed a desire to have the option of repurchasing the lands again, but at what time that particular conversation took place I don't know, but there was some conversation.

130 52. You don't recollect when the conversation took place?

A. No, sir.

53. Or whether Wallace was present?

A. I don't know whether he was present or not; very likely he may have been present.

54. Do you recollect anything about Wallace's participating in any such conversation?

A. No, sir; so far as that was concerned, Dr. Ford seemed to desire an opportunity to purchase these lands, and seemed to think that the purchase was a good one, and therefore would like to have the option of repurchasing.

55. You knew that there was not very much danger of Dr. Ford having the money to repurchase?

A. Dr. Ford might have raised the money on the lands. Of
131 course, we thought the lands were worth more than we were paying for them or we would not have bought them.

56. Dr. Ford was not a man of very much means, was he?

A. No; I don't think he had; I don't think he had very much means.

57. Wasn't this option to repurchase the lands a part of the proposition or negotiations throughout the whole transaction coming from Ford or——

A. My recollection is—I don't know what he said to any one else, but my recollection is that it was not talked about. My recollection is that it was said by Dr. Ford when we were hesitating—the truth is we hesitated about buying the lands from Wallace; we were
132 doubtful about his title. We were afraid of him, and it was when Dr. Ford expressed a desire to have this option of repurchase for sixty days that settled me in making the purchase. I don't think I would have made the purchase if it had not been for Dr. Ford's desiring that option. Therefore I don't think it belonged to the original proposition. It might have been talked about before it was finally consummated.

58. In what way did you take possession of those lands?

A. I suppose in the same way that every man takes possession of lands that don't actually go upon them. We commenced paying taxes upon them, and we had an agent up there to look after the sale of them. I never was on the lands myself. I believe Mr. Connable and Mr. Davis were.

133 59. Can you make a statement of the amount of taxes that you paid on the lands?

A. I could if I had a little time.

60. And file it with the notary as a part of your answer to this question.

A. I will do so if you desire that.

61. Well, I desire it.

A. Well, I will have it done.

Counsel for plaintiffs here offers in evidence said statement, which is hereto attached and marked Exhibit 9.

Do you want them in detail, Mr. Collier, or the amount? I can give them in detail and give the dates, and so on, each year.

62. I would prefer to have it in that shape.

A. Very well. It is just as easy to do that, you know.

(Witness excused.)

134 C. F. DAVIS, one of the complainants, called on the part of complainants, being first duly sworn, deposes and says:

Direct examination by HAGERMAN:

63. State your name, age, and place of residence.
A. C. F. Davis; age, 53; residence, Keokuk.
64. How long have you lived in Keokuk?
A. About 33 years.
65. Are you one of the complainants in this case?
A. Yes, sir.
66. Do you know the defendants, John A. Wallace and E. R. Ford?
A. I do.
67. Please state in a general way what you knew about lands in Northern Iowa and in Clay and Sioux counties prior to the time that negotiations were begun for the purchase of the lands in
135 controversy in this case from Wallace.

A. Well, I had made some investments in the lands previous to that, in some of those counties in that part of the State, and had given some little attention to land there through inquiries and persons, getting information from others, and as to land I had in connection with other parties and lands in different parts of the State some time previous to this transaction.

68. State now how the purchase of these lands in controversy from Wallace was brought about. Begin at the beginning and state all the facts and circumstances that you know in reference to *to* it down to the time of the final consummation of the contract.

136 A. My attention was first called to these lands by Mr. Leighton, who said that he knew of a body of lands in Northwestern Iowa there that could be bought very low, and was willing to join in the purchase at that time. I don't think he mentioned to me the owner of the lands, and it was not very long before Dr. Ford and Wallace came here, and I had some conversation with Mr. Leighton in regard to that at several times before they came, and then after Wallace and Ford came, and also with Dr. Ford, who seemed to be negotiating the sale for Wallace, and finally agreed to purchase them at about a dollar and a half an acre.

137 69. State what were the conversations between yourself and Wallace with reference to the purchase of these lands, where such conversations were, and who was present. State what was said and al- that was said, as near as you can recollect.

A. The first conversation that I had was with—after the arrival of Ford and Wallace here—was with Dr. Ford and Mr. Leighton. Mr. Wallace—I had very little conversation with him until the purchase was about concluded, except to see his deeds of conveyance to him from Mr. Kilbourne and others. That was at the savings bank.

I think he brought the deeds and papers there. I think he
138 had his deeds and abstracts of title to the land. I think that was in the presence of Dr. Ford, and Mr. Leighton, and Judge Johnstone, and Mr. Connable.

71. Well, state what the conversations were.

A. The conversation was principally in regard to the purchase of the land. We found—well, Mr. Leighton had looked over the deeds and was familiar with the lands. He owned a large body of lands himself in that district of country and was familiar with the country generally, and in the course of the examination he found some defect in one of the deeds. We finally concluded to purchase, with the understanding that part of the money was to be
139 withheld until the defect in the deed was corrected and we had ascertained in regard to the payment of taxes—whether there were any taxes due on the lands.

72. When and where was the final agreement made for the purchase of the lands, and who were present?

A. At the Keokuk Savings Bank, and all the parties I have named were present. I think Connable, Johnstone, Leighton, Dr. Ford, and Mr. Wallace and myself.

73. State whether or not there was at any time any contract or understanding between yourself and the other purchasers of the land and Mr. Wallace or Mr. Ford, or either of them, other than *the* such as expressed in the papers—the deeds from Wallace,
140 the letter to Wallace signed by the purchasers (Exhibit 4 hereto), and the paper called the option contract.

A. There was no other contract or agreement outside of those papers, either written or verbal, that I know of.

74. State whether or not there was ever any contract looking to a loan to Wallace, or what, if anything, was ever said about a loan to him.

A. I never heard a word mentioned about a loan in connection with the matter.

75. When did you first ever hear of any claim that there was a loan?

A. About seven years after—six or seven years.

76. Was it after the answer was filed in this case?

A. Yes, sir; after the answer was filed.

141 77. Did you ever hear from Mr. Leighton at any time anything about any loan?

A. No, sir; all my talk with Mr. Leighton was in regard to the purchase of the land.

78. Did he ever talk to you about lending money?

A. Never; at that time I had no money to loan.

79. How did you and the other purchasers raise the money to pay for this loan?

A. We borrowed the money.

80. Would you have loaned the money on this land?

Counsel for defendan-s objects to this question as hypothetical and incompetent, irrelevant and immaterial.

A. No, sir; I would not.

81. What did you know about the values of these lands at
142 the time that you purchased them?

A. Well, I considered the lands worth at that time more than we paid for them, probably, or I would not have made the purchase, though I knew at the time that lands were selling at about those figures in all that part of the country. Very large amounts of lands were selling at about those figures, and I made within a very short time after that other purchases of lands at the same price, and two years after that I bought as good land in same counties at two dollars an acre.

82. State whether Mr. Leighton had any authority from you to purchase lands or to loan money for you.

143 A. None whatever.

83. What afterward became of Mr. Leighton's interest in these lands?

A. I purchased his interest in these lands, together with some other lands that we held together.

84. That he conveyed to you by the deeds which were introduced in evidence in connection wiih Judge Johnstone's testimony?

A. Yes, sir.

Cross-examination by Mr. COLLIER:

85. When did you first hear of this option contract, mentioned in the negotiations?

A. Well, it was a very short time—it was some time after Ford and Leighton was here, and it was only a short time before
144 we concluded the purchase that we learned that Dr. Ford desired an option to repurchase the land in 60 days.

86. The paper called an option contract was delivered at the same time the other papers were delivered, was it not?

A. Yes, sir; it was delivered to Dr. Ford when the deeds were delivered to us.

87. Wallace was present at the time of the delivery of these papers?

A. Yes, sir; I think he was.

88. And took a part in the conversation which resulted in the delivery, did he not?

A. I suppose so.

89. Dr. Ford was claiming to be the agent of Wallace in these negotiations also, you have stated, I believe?

145 A. I considered him as acting as agent.

Redirect examination by Mr. HAGERMAN:

90. What about the acknowledgement of the option contract, if you know anything, Mr. Davis?

A. I remember that after the papers were delivered, a very short time after, Mr. Ballinger came into the bank and Judge Johnstone and I were there, and I don't know whether any other parties were there at the time or not, and asked if that was our signature and

voluntary act, and went out. That is all I know about the acknowledgement.

91. It was, then, as you recollect—the option contract was, then, as you recollect, signed and delivered before it was acknowledged?

A. Yes, sir.

146 CHARLES P. BIRGE, called on the part of the complainants, having been first duly sworn, deposes and says:

Direct examination by Mr. HAGERMAN:

92. State your name, age, place of residence, and occupation.

A. Charles P. Birge; age, 47; residence, Keokuk; occupation, merchant.

93. How long have you lived in Keokuk?

A. 26 years.

94. Do you know the complainants in this case, Edward Johnstone, C. F. Davis, and A. L. Connable?

A. I do.

95. Do you know the defendants, E. R. Ford and John A. Wallace?

A. I do.

96. Where were you living in 1875 and in what business were you engaged?

147 A. In the wholesale business. I was living here at the time.

97. Do you know the lands in question, in Sioux county, Iowa, that were bought by Johnstone, Connable, Leighton, and Davis from Wallace?

A. I do.

98. Were you familiar with lands—wilds lands—in the northern part of Iowa and in the counties of Clay and Sioux in 1875?

A. I was.

99. State generally what you knew about wild lands, as to their market value, and what you knew in a general way; your relation to such lands in that part of the State of Iowa at that time, 1875.

A. In 1874–'5 I visited that section of the country and made quite an exhaustive investigation of the wild lands of the
148 country, which at that time were greatly depressed and had very little, if any, saleable value. I bought myself some thousands of acres in Clay and Sioux and other counties at from a dollar and a quarter to two and a half and three dollars an acre, and subsequently for two, three, four, or five years continued to buy, perhaps up to the amount of 25,000 acres of lands, and could have bought any quantity more at the same prices if I had had the money.

100. State, from your knowledge, what, in your opinion, was the reasonable market value of these lands bought by Johnson, Connable, Leighton, and Davis from Wallace in one body, for cash, in February, 1875.

149 A. I bought lands lying adjoining, just as good, for a dollar and — quarter an acre afterwards, and to the amount of some

two or three thousand acres, and I paid two dollars and fifty cents cash subsequently to this purchase, and my opinion is that my lands were fully as good as what is known as the Johnstone purchase. So my opinion is that their value was about two dollars and a half an acre, and to give it a range, say, from two dollars to three dollars an acre.

101. When was it that you bought the lands for a dollar and a quarter an acre?

A. My recollection is now that it was in 1876. I made a
150 purchase of Dr. Ford myself—that is, at his solicitation—at a dollar and a quarter an acre in Clay county. I think it was in 1876. It was a part of this same original block left on their hands, so he told me at the time.

102. How many acres did you buy from him?

A. That was 320 acres. I bought of other parties along about the same time and since many tracts at two dollars. Four years ago this summer Mr. Connable and myself bought in Clay county when we were there together several tracts of lands for two dollars cash. It was the summer George Williams died, I think, four years ago this summer in the month of July. I bought 1,000 acres in
151 one body in Emmet county of the supervisors of Des Moines county, at Burlington, for a dollar and a half an acre, I think, as late as two years ago this spring, and that after they had been up there and made a careful examination themselves. I went up to Burlington and made this purchase of 1,000 acres for $1,500, and subsequently I bought in this city from William Leighton's estate some 3,000 acres, I think, in Kossuth, Palo Alto, and Emmet counties for three dollars a- acre cash, and that after they had spent six months trying to make a sale; and I also purchased of the Perry estate—I didn't purchase, but sold for the Perry estate—
152 some 6,000 or 7,000 acres of land scattered over two or three counties there—similarly situated to the Clay county lands, no better nor no worse—as late as two years ago at three dollars cash. Perhaps that is full enough.

Cross-examination by Mr. COLLIER:

103. Were not the lands which you purchased from Des Moines counties for a dollar and a half an acre a portion of certain lands which had been distributed among the counties, and which were known as swamp lands?

A. They were known as swamp lands—indemnity lands.

104. You have been very largely engaged with Mr. Connable, one of the plaintiffs, in dealing in lands in Northwestern Iowa,
153 have you not?

A. Yes, sir; and on my own account.

105. Have you been interested with any of the other plaintiffs—Mr. Davis or Judge Johnstone—in land transactions in Iowa or elsewhere?

A. Never.

(Witness excused.)

By consent, the further taking of these depositions is adjourned until Saturday morning, August 26th, 1882.

154 United States Circuit Court Chambers.

KEOKUK, IOWA, *Aug.* 26, 1882.

The further taking of these depositions is now resumed, pursuant to the foregoing adjournment.

A. L. CONNABLE, one of the complainants, called on the part of complainants, having been duly sworn, deposes and says:

Direct examination by Mr. HAGERMAN:

106. State your name, age, and place of residence.

A. A. L. Connable; residence, Keokuk, Iowa; age, 71.

107. In what business are you engaged?

A. Well, farming and trading in property sometimes and lands.

108. How long have you lived in Keokuk?

155 A. I have lived here—I came here in 1848.

109. You are one of the plaintiffs?

A. Yes, sir.

110. Do you know the defendants, John A. Wallace and E. R. Ford?

A. Yes, sir.

111. Were you present at the time the contract was made between yourself, Edward Johnstone, C. F. Davis, and Wm. Leighton, of the one part, and Wallace and Ford, of the other part, concerning the lands that are in controversy in this case?

A. I was.

112. Where was the contract made?

A. At the savings bank.

113. State what took place there, as you remember it—all that was said and done.

A. Dr. Ford told me that Wallace had some lands in the
156 northwest part of Iowa to sell, and was obliged to raise the money, and would sell them very cheap, and we, Johnstone and myself and Davis and Leighton, agreed to buy the land at a certain price, about a dollar and a half an acre, or near that, and we bought them.

114. Did you at any time loan Wallace any money upon these lands?

A. No, sir.

115. Was there at any time anything said about loaning him money?

A. Never to my knowledge.

116. Did you ever hear anything either from him or from Mr. Leighton with reference to a loan upon them?

A. No, sir; never.

117. Did you ever hear anything from anyone else with
157 reference to a loan upon them?

A. No, sir. Well, I have forgotten how long; there was

an option given to Mr. Ford, and I am told that that option was transferred to Wallace; and he, as I understand, claims now that it was a loan of which we had no expectation whatever.

118. When was the first that you ever heard of the claim that it was a loan?

A. Well, I think it is within the last year.

119. Since the commencement of this suit?

A. I think so; yes, sir.

120. Now, was there any contract or understanding between any of the purchasers and Mr. Wallace and Mr. Ford outside of that which was expressed in the written contracts—namely, the
158 deeds from Wallace to you and the written option contract to Dr. Ford?

A. Nothing.

121. How did you get this money? Do you remember that you paid for the lands?

A. Well, we borrowed the money. We hadn't the money at the time, neither of us, but we borrowed the money and paid for the land.

122. Was Mr. Leighton at that time in any way connected with the Keokuk Savings Bank?

A. Not to my knowledge.

123. What knowledge had you of Northwest Iowa lands at and prior to the time that you bought of Wallace?

A. Well, I hadn't much knowledge only through Col. Perry and Leighton and Kilbourne—those owning lands in that sec-
159 tion of the country known as railroad lands.

124. Had you previously bought any lands there?

A. I had lands there that I had owned several years, but I have forgotten whether they were bought before or after I bought these lands—Wallace lands.

125. Do you know what were the value of these lands that you bought—the reasonable market value of these lands at the time that you bought them?

A. At the time that we bought them there seemed to be no value on the lands. There were certain circumstances under which it seemed to render the whole country worthless, grasshoppers and so on, and we thought it would not last always, and therefore that it
160 would be a good investment, and therefore we bought the land. There was land sold for less money than we paid.

126. I will ask you this question, whether you ever heard anything said by Wallace or Leighton or any one of your copurchasers about usurious interest being paid for this land?

A. No, sir; I never.

127. Did you ever hear the subject of interest mentioned in connection with this?

A. No, sir.

128. Have you ever seen these lands since you bought them?

A. I have seen some of them—the most of them.

129. Have you invested in other wild lands in that section of the country?

A. Yes, sir.

161 130. Have you at any time loaned money on any lands in that section of the country?

A. No, sir.

131. Would you make loans on lands there?

A. No, sir.

Counsel for defendants moves to strike out the question and answer as incompetent, irrelevant, and immaterial and asking for a conclusion, and as being hypothetical.

132. I will ask you to state whether or not Mr. Leighton had any authority from you to make any contract for loaning money.

A. No, sir.

133. Had he any authority from you to make any contract for the purchase of lands?

A. No, sir.

134. State when you first heard that this option contract had been assigned to Mr. Wallace.

162 A. Within the last year; I can't say definitely as to the time.

135. Were the deeds from Wallace to you and the option contract from you to Dr. Ford delivered simultaneously?

A. I think they were delivered at the time of the contract.

136. Do you know whether the option contract was acknowledged at the time it was delivered or was acknowledged subsequently to that?

A. I have no knowledge on that; I don't know.

Cross-examination by Mr. COLLIER:

137. At the time of the transaction were you not advised that Dr. Ford was acting for Wallace in the matter?

A. Well, he was, as I understood; as I understood, he
163 came here for the purpose of assisting him in making the sale of some lands.

138. Didn't you understand at the time of the transaction that he was taking this option for Wallace?

A. No, sir; I thought he was taking it for himself.

139. Didn't you know before the thing was finally closed up that he had assigned that contract to Wallace?

A. No, sir; I had no knowledge of that whatever.

140. Did you take part in any other conversations with reference to the transaction, except at the savings bank, at the time that it was closed up and the papers exchanged?

A. I don't remember that I had any other conversation at any other time.

164 141. That is, with Ford and Wallace?

A. I don't think I had any conversation with Wallace on the subject. I think the conversation upon the contract was virtually made or partially made with Ford.

142. Were you present at any other interview with Ford prior to the time that the matter was closed up at the Savings Bank?
A. No, sir; I think not.

(Witness excused.)

(Copy.)

EXHIBIT 1.

For the consideration of nine hundred and sixty dollars we, John A. Wallace and Frances E. Wallace, his wife, of the city and county of St. Louis, Mo., hereby sell and convey to Edward Johnstone,
165 Edward Connable, C. F. Davis, and William Leighton, of Lee county, State of Iowa, the following tract of land, to wit:
All of section (36) thirty-six, township (94) ninety-four, range 44 forty-four, cont'g (640) six hundred and forty acres, situated in the county of Sioux and State of Iowa; and we, the said John A. Wallace and Frances E. Wallace, his wife, do hereby warrant the title against all persons whomsoever claiming by, through, or under us or either of us.
In witness whereof we have hereunto signed our names this 17th day of February, 1875.

JOHN A. WALLACE.
FRANCES E. WALLACE,
By JOHN A. WALLACE,
Her Attorney-in-Fact.

166 STATE OF IOWA, }
County of Lee, } ss:

Be it remembered that on this 17th day of Feb'y, 1875, before me, William Ballinger, a notary public in and for said county, personally appeared John A. Wallace, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor and whose name is subscribed to said instrument as attorney for the other grantor therein named, and acknowledged the same to be his voluntary act and deed, and to be the voluntary act and deed of the said other grantor therein named by him, as her attorney thereunto appointed, voluntarily done and executed.
167 In testimony whereof I have hereunto subscribed my name and affixed my seal notarial the day and date above written.
[SEAL.] WM. BALLINGER,
Notary Public.

(Upon the back of which deed was the following endorsement:) Filed for record the 12th day of March, 1875, at ten (10) o'clock a. m., and duly recorded in the Book G, page 59. F. Le Cocq, Sr., recorder. Entered for taxation this 12th day of March, A. D. 1875. L. M. Black, auditor.

(Copy.)

COMPLAINANTS' EXHIBIT 2.

For the consideration of four thousand three hundred and six-

teen dollars we, John A. Wallace and Frances E. Wallace, his
168 wife, of the city and county of St. Louis, Mo., hereby sell and convey to Edward Johnstone, A. L. Connable, C. F. Davis, and William Leighton, of Lee county, Iowa, the following tract of land, to wit:

Section ten (10) ten, cont'g (640) acres, and section (18) eighteen, cont'g 624 acres, both in township (94) ninety-four, range (36) thirty-six; the west half of section (8) eight, cont'g 320 acres; the north half and the southeast quarter of section (13) thirteen, cont'g 480 acres; the east half of section (17) seventeen, cont'g 320 acres, and the southwest quarter of section (35) thirty-five, cont'g 160 acres, all in township (94) ninety-four, range (37) thirty-seven—in all,
169 (2,544) twenty-five hundred and forty-four acres, situated in the county of Clay and State of Iowa; and we, the said John A. Wallace and Frances E. Wallace, his wife, do hereby warrant the title against all persons whomsoever claiming by, through, or under us or either of us.

In witness whereof we have hereunto signed our names this 17th day of February, (1875) eighteen hundred and seventy-five.

JOHN A. WALLACE.
FRANCES E. WALLACE,
By JOHN A. WALLACE,
Her Attorney-in-Fact.

STATE OF IOWA, }
County of Lee, } *ss:*

Be it remembered that on this 17th day of February, 1875, before me, Wm. Ballinger, a notary public in and for said county,
170 personally appeared John A. Wallace, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor and whose name is subscribed to said instrument as attorney for the other grantor therein named, and acknowledged the same to be his voluntary act and deed, and to be the act and deed of the said other grantor therein named by him, as her attorney thereunto appointed, voluntarily done and executed.

In testimony whereof I have hereunto subscribed my name and affixed my seal notarial the day and date above written.

[SEAL.] WM. BALLINGER,
Notary Public.

(On the back of which deed was the following): Filed for record the 26 of Feb., 1875, at 4 o'clock p. m., and duly recorded in "D." book "L," on page 191. A. H. Cheny, recorder.

171 Entered for taxation this 23rd day of February, A. D. 1875.
L. M. PEMBERTON, *Auditor.*

(Copy.)

COMPLAINANTS' EXHIBIT 3.

Know all men by these presents that I, the undersigned, Frances E. Wallace, wife of John A. Wallace, of the city of St. Louis, county

of St. Louis and State of Missouri, have this day made, constituted, and appointed, and do by these presents make, constitute, and appoint, the said John A. Wallace, of the said city, county, and State aforesaid, my true and lawful attorney for me and in my name to sell and dispose of absolutely, in fee simple or otherwise, any land or lands, in which I am interested, situate, lying, and being in
172 any of the counties of the State of Iowa, for such price or sum of money and to such person or persons as he shall think fit and convenient; and also, for me and in my name and as my act and deed, to sign, execute, acknowledge, and deliver such deed or deeds and conveyance or conveyances for the absolute sale and disposal thereof or any part thereof, with such clause or clauses, covenant or covenants, and agreement or agreements to be therein contained, as my attorney shall think fit and expedient, hereby ratifying and confirming all such deeds, conveyances, bargains, and sales which shall at any time hereafter be made by my said attorney touching or concerning any of said premises.

173 In testimony whereof I have hereunto set my hand and seal on this 15th day of February, A. D. 1875.

FRANCES E. WALLACE. [SEAL.]

STATE OF MISSOURI, } ss:
St. Louis County, }

Be it remembered that on this 15th day of February, A. D. 1875, before the undersigned, a notary public within and for the county of St. Louis and State of Missouri, personally came Frances E. Wallace, wife of John A. Wallace, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be her act and deed for the purposes therein mentioned. The said Frances E. Wallace, being by me first made acquainted with the contents of said instrument, upon an examination
174 seperate and apart from her husband, acknowledged that she executed the same and relinquished her dower in and to any lands in the State of Iowa, freely and without fear, compulsion, or influence of her said husband.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, No. 520 Pine street, St. Louis, Mo., in said county, the day and year first above written.

[SEAL.] GEO. W. McCLEARY,
Notary Public, St. Louis Co.

STATE OF MISSOURI, } ss:
St. Louis Co., }

On this 15th day of Feb., A. D. 1875, before me, a notary public within and for the county of St. Louis and State of Missouri, personally came Mrs. Frances E. Wallace, wife of John A.
175 Wallace, both of said city, county, and State, to me known to be the identical person whose name is affixed to the above instrument, and acknowledged the execution of the same to be her voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal, in St. Louis, Mo., the day and year first above written.

[SEAL.] GEO. McCLEARY,
Notary Public, St. Louis Co.

STATE OF MISSOURI, } ss:
County of Missouri, }

I, Ferdinand L. Garesche, clerk of the county court of St. Louis county, certify that George W. McCleary, whose name is subscribed to the foregoing certificate, dated February 15th, 1875, was on said date and acting notary public in and for said county, duly
176 commissioned and qualified; that I am acquainted with his handwriting and verily believe that the signature thereto is genuine, and that to all such his official acts full faith and credit are and ought to be given.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 15th day of February, eighteen hundred and seventy-five.

[SEAL.] FERD. L. GARESCHE, *Clerk.*

(Upon which power of attorney was endorsed the following:)

STATE OF IOWA, } ss:
Sioux County, }

Filed for record the 26th day of March, A. D. 1875, at 10 o'clock a. m., and recorded in Book No. 1 of Miscellaneous Records, at page 388.

F. LE COCQ, SR., *Recorder.*

177 STATE OF IOWA, } ss:
Clay County, }

Filed for record the 26th day of February, A. D. 1875, at 6 o'clock p. m., and recorded in Book "A," Miscellaneous Records, on page 54.

A. H. CHENEY, *Recorder.*

(Copy.)

COMPLAINANTS' EXHIBIT 4.

KEOKUK, IOWA, 17*th Feb.*, 1875.

John A. Wallace, Esq.

DEAR SIR: We will pay the balance on lands purchased this day from you, to wit ($1,376), thirteen hundred and seventy-six dollars, when there is handed to us a proper deed from D. W. Kilbourne and wife to you for sec. 36, T. 94, R. 44, 640 acres in Sioux county, Iowa, and we find the taxes on lands in Clay and Sioux
178 counties purchased from you all duly paid and titles all correct.

Of course we will deduct the expenses attending the recording of the power of attorney from your wife, as also the deeds from

Palmer and wife and Kilbourne and wife in the counties of Clay and Sioux.

Truly yours,

WM. LEIGHTON.
C. F. DAVIS.
EDWARD JOHNSTONE.
A. L. CONNABLE.

(On the back of which is endorsed the following:)

$800.00. KEOKUK, IOWA, *March 10th*, 1875.

Rec'd from W. Leighton, C. F. Davis, Edward Johnstone, and A. L. Connable, within named, the sum of eight hundred dollars on acc't of within agreement.

JOHN A. WALLACE,
By WM. BALLINGER,
His Attorney.

179 Rec'd from Wm. Leighton, C. F. Davis, E. Johnstone, and A. L. Connable one hundred and seven dollars.
May 27, 1875.

JOHN A. WALLACE,
By WM. BALLINGER,
His Att'y.

$459.44. Rec'd June 4th, 1875, four hundred and fifty-nine and $\frac{44}{100}$ dollars, which, with $9.56 expenses for recording and stamps, is balance of this contract.

JOHN A. WALLACE,
By WM. BALLINGER,
His Att'y.

(Attached to this paper is a small paper reading as follows:)

J. A. Wallace, acc't.

1875, FEB. 17TH.

Price for 3,184 acres agreed upon		$4,876
Cash paid on delivery of deed		3,500
		$1,376
Cash paid per W. Ballinger	$800	
" " " " "	107	
" recording & (— —)	9 56	
	$916 56	
		$459 44

180 (Copy.)

COMPLAINANTS' EXHIBIT 5.

For the consideration of four hundred and forty dollars we, Wm. Leighton and Elizabeth A. Leighton, his wife, of Lee county and State of Iowa, hereby sell and convey to C. F. Davis, of the city of Keokuk, county of Lee, and State of Iowa, the following tract of land, to wit: An undivided one-fourth of all of section (36) thirty-six, township (94) ninety-four, range (44) forty-four, cont'g (640) six hundred and forty acres, situated in the county of Sioux and State of Iowa; and I, the said William Leighton, warrant the title against all persons whomsoever claiming by, through, or under us or either of us.

181 In witness whereof we have hereunto signed our names this 5th day of August, eighteen hundred and seventy-five.

WM. LEIGHTON.
ELIZABETH A. LEIGHTON.

STATE OF IOWA, } ss:
Lee County, }

Be it remembered that on this 5th day of August, A. D. 1875, before the undersigned, W. B. Collins, a notary public in and for said county, personally appeared Wm. Leighton and Elizabeth Leighton, his wife, who are personally known to me to be the identical persons whose names are subscribed to the above deed as grantors, and acknowledge the same to be their voluntary act and deed for the uses and purposes therein written.

Witness my hand and notarial seal on said day last written above.

[SEAL.] W. B. COLLINS,
Notary Public.

182 (On the back of which deed was endorsed the following:)

Filed for record the 10th of August, 1875, at 9 o'clock a. m. and duly recorded in Deed Record Book "G," Sioux Co., Ia., Records, page 248.

F. LE COCQ, SR., *Recorder.*

Entered for taxation this 20th day of August, A. D. 1875.

L. M. BLACK, *Auditor.*

(Copy.)

COMPLAINANTS' EXHIBIT 6.

For the consideration of twenty-six hundred and twenty-nine dollars we, William Leighton and Elizabeth A. Leighton, his wife, of Lee county and State of Iowa, hereby sell and convey to C. F. Davis, of the city of Keokuk, county of Lee and State of Iowa, the following tract of land, to wit: Nine hundred and fifty-six acres
183 of land, the same being an undivided one-fourth interest in and to the following-described real estate, viz:

The north half and the southeast quarter of section (8) eight; also all of section (10) ten; also all of section (18) eighteen, cont'g 624 acres; also the north half of section (33) thirty-three, all of township (94) ninety-four, range (36) thirty-six; also the southwest quarter of section (5) five; also the west half of section (8) eight; also the south half of section (11) eleven; also the north half and the southeast quarter of section (13) thirteen; also the east half of section (17) seventeen; also the southwest quarter of section (35) thirty-five, all in township (94) ninety-four, range 37, thirty-seven, cont'g in all 3,824 acres, in the county of Clay and State of
184 Iowa; and I, the said William Leighton, warrant the title against all persons whomsoever claiming by, through, or under us or either of us.

In witness whereof we have hereunto signed our names this 5th day of August, eighteen hundred and seventy-five.

WM. LEIGHTON.
ELIZABETH A. LEIGHTON.

STATE OF IOWA, } ss:
Lee County, }

Be it remembered that on this 5th day of August, A. D. 1875, before the undersigned, W. B. Collins, a notary public in and for said county, personally appeared Wm. Leighton and Elizabeth A. Leighton, his wife, who are personally known to me to be the identical persons whose names are subscribed to the above deed as grantor-, and acknowledge the same to be their voluntary act
185 and deed for the uses and purposes therein written.

Witness my hand and notarial seal on said day last above written.

[SEAL.] W. B. COLLINS,
Notary Public.

On the back of which deed was the following endorsement:

STATE OF IOWA, } ss:
Clay County, }

Filed for record August 10th, 1875, at 9 o'clock a. m. and duly recorded in Deed Book "I," page 326.

A. H. CHENEY, *Recorder.*

Entered for taxation this 9th day of August, A. D. 1875.

L. M. PEMBERTON, *Auditor.*

(Copy.)

COMPLAINANTS' EXHIBIT 7.

For the consideration of two hundred and twenty dollars we, C. F. Davis and Caroline T. Davis, his wife, of Lee county,
186 State of Iowa, hereby sell and convey to Edward Johnstone, of the city of Keokuk, county of Lee and State of Iowa, the following tract of land, to wit:

An undivided one-eighth ($\frac{1}{8}$) of all of section (36) thirty-six, township (94) ninety-four, range (44) fourty-four, containing (640) six hundred and forty acres, in the county of Sioux and State of Iowa; and I, the said C. F. Davis, warrant the title against all persons whomsoever claiming by, through, or under us or either of us.

In witness whereof we have hereunto signed our names this 6th day of August, eighteen hundred and seventy-five.

C. F. DAVIS.
CAROLINE T. DAVIS.

187 STATE OF IOWA, } ss:
Lee County, }

Be it remembered that on this 14th day of August, A. D. 1875, before the undersigned, Edward Mumm, a notary public in and for said county, personally appeared C. F. Davis and Caroline T. Davis, his wife, who are personally known to me to be the identical persons whose names are subscribed to the above deed as grantors, and acknowledged the same to be their voluntary act and deed for the uses and purposes therein written.

Witness my hand and notarial seal said day last above written.

[SEAL.] EDW'D MUMM.

(On the back of which deed is the following endorsement:)

188 Filed for record 15th day of Sept., 1875, at 9 o'clock a. m., and duly recorded in Deed Book "G" of Deeds, page 285.

F. LE COCQ, SR., *Recorder*.

Entered for taxation this 15th day of Sept., A. D. 1875.

L. M. BLACK, *Auditor*.

COMPLAINANT'S EXHIBIT 8.

(Copy.)

For the consideration of thirteen hundred and fourteen $\frac{50}{100}$ dollars we, C. F. Davis and Caroline T. Davis, his wife, of Lee county, State of Iowa, hereby sell and convey to Edward Johnstone, of the city of Keokuk, county of Lee, and State of Iowa, the following tract of land, to wit:

Four hundred and seventy-eight acres of land, the same being an undivided one-eighth ($\frac{1}{8}$) interest in and to the following-

189 described real estate, viz: The north half and the southeast quarter of section (8) eight; also all of section 10; also all of section (18) eighteen, said to contain 624 acres; also the north half of section (33) thirty-three, all in township (94) ninety-four, range (36) thirty-six; also the southwest quarter of section (5) five; also the west half of section 8; also the south half of section *of* (11) eleven; also the north half of the southeast quarter of section (13) thirteen; also the east half of section (17) seventeen; also the southwest quarter of section (35) thirty-five, in township 94, range (37) thirty-seven, containing in all 3,824 —, in the county of Clay and State of Iowa, and I, the said C. F. Davis, warrant the title against all persons whomsoever.

190 In witness whereof we have hereunto signed our names this 6th day of August, eighteen hundred and seventy-five.

C. F. DAVIS.
CAROLINE T. DAVIS.

STATE OF IOWA, } ss:
Lee County, }

Be it remembered that on this 14th day of August, A. D. 1875, before the undersigned, Edward Mumm, a notary public in and for said county, personally appeared C. F. Davis and Caroline T. Davis, his wife, who are personally known to me to be the identical persons whose names are subscribed to the above deed as grantors, and acknowledge the same to be their voluntary act and deed for the uses and purposes therein written.

191 Witness my hand and notarial seal on said day last above written.

[SEAL.] EDW'D MUMM,
Notary Public.

(Upon the back of which deed was endorsed the following:) Filed for record Sept. 18, 1875, at 10 o'clock a. m., and duly recorded in Deed Book No. 1, page 366.

A. H. CHENEY, *Recorder.*

Entered for taxation this 18th day of Sept., A. D. 1875.
L. M. PEMBERTON, *Auditor.*

192 EXHIBIT "9."

JOHNSTONE *et al. vs.* WALLACE *et al.*

Statement of Taxes Paid by Johnstone, Connable & Davis on Lands Purchased of J. A. Wallace Feb. 17, '75.

County.	Description.	1875.	1876.	1877.	1878.	1879.	1880.	1881.	Total.
Sioux Co.	All of sec. 36, 94, 44...	95 40	112 00	62 56	64 72	85 04	61 20	79 16	$560 08
Clay Co.	All of sec. 10, 94, 36...	157 44	78 08	65 52	68 40	68 64	60 48	47 08	545 64
" "	" " " 18, 94, 36								
" "	W. ½ " " 8, 94, 37								
" "	N. ½ " " 13, 94, 37								
" "	S. E. ¼ " " 13, 94, 37	288 00	333 20	268 00	240 00	134 40	186 42	12 80	1,462 82
" "	E. ½ " " 17, 94, 37								
" "	S. W. ¼ " " 5, 94, 37								
	Total.....	.....	.....	.....	.....	.....	.....	.....	$2,568 54

P. S.—Taxes maturing and paid by purchasers to whom we sold in the meantime should be added to the above, in order to get the whole amount of tax paid on the above-described lands since our purchase of Wallace in Feb'y, 1875. These amounts (paid by subsequent purchasers from us) we are unable to give.

193 STATE OF IOWA, } ss:
Lee County, }

I, Fred. P. Barnett, a notary public in and for the State and county aforesaid, hereby certify that in pursuance of the stipulations attached

to the depositions of E. R. Ford and others, heretofore taken in the case of Edward Johnstone *et al. versus* John A. Wallace *et al.*, now pending in the circuit court of the United States, district of Iowa, central division, at Des Moines, came before me at my office, in the United States circuit court chambers, Keokuk, Iowa, on the 23 day of August, 1882, Edward Johnstone, C. F. Davis, Chas. P. Bird, A. L. Connable, witnesses called on the part of the complainant, who, having been first duly sworn by me, and, being examined,
194 there said examination was at the time taken down by me in short-hand. I also further certify that the foregoing — pages are a true and correct transcript of the depositions of the said witnesses so given; that I am neither of the parties nor the attorney of either, nor anywise interested in the event of this suit; that the parties to said suit were present—complainants, by their attorneys, Hagerman, McCreary & Hagerman, and respondents, by their attorneys, Craig, Collier & Craig.

Witness my hand and seal notarial this 1st day of September, A. D. 1882.

[Notarial seal Fred. Barnett, Iowa.]

(S'g'd) FRED. P. BARNETT,
Notary Public.

Reporter's fee:

14,700 words, @ 15c. per folio	$22 05
Certificate	50
	$22 55

195 (Endorsed:) Johnstone *vs.* Wallace. Deposition of Edward Johnstone *et al.* Filed May 16, 1883. E. R. Mason, clerk.

196 *Transcript Evidence "D."*

W. B. Collins, witness.

Deposition of W. B. Collins in the case of Edward Johnstone *et al. vs.* John A. Wallace *et al.*

W. R. Sellon, short-hand reporter.

Deposition of W. B. Collins, a witness produced, sworn, and examined in a certain case now pending in the circuit court of the United States for the district of Iowa, central division, at Des Moines, in which Edward Johnstone, A. L. Connable, and C. F. Davis are complainants and John A. Wallace and E. R. Ford are defendants, on the part of the complainants.

W. B. COLLINS, of lawful age, having been duly produced, sworn, and examined on the part of the complainants in the above-named cause, deposeth and saith:

Examined by Mr. HAGERMAN:

197 Int. 1. What is your name, age, place of residence, and occupation?

Ans. W. B. Collins; age, forty-one; residence, Keokuk, Iowa; occupation, attorney-at-law.

Int. 2. How long have you been practicing law at Keokuk?

A. I have been practicing law at Keokuk about seventeen years—or say sixteen years, about.

Int. 3. Do you know the plaintiffs and the defendants in this case?

Ans. I do.

Int. 4. Did you know William Leighton, of Keokuk, Iowa, in his lifetime?

Ans. Yes, sir; very well.

Int. 5. Do you know about the circumstance of the plaintiffs and William Leighton buying the lands that are in controversy in this case from the defendant, John A. Wallace, and did you have anything to do with that purchase?

198 Ans. I know of the fact several years ago of the plaintiffs and William Leighton purchasing from John A. Wallace divers tracts of land situated, I think, in one or two counties of the State of Iowa, or in three counties of the State of Iowa. Whether or not it was this particular land in controversy I could not say, but I believe it is and corresponds with the description of the lands at that time purchased; and Co. Leighton and the plaintiffs—but principally the conversation was with Col. Leighton—desired me to examine into the papers and the matters and facts connected with that purchase and to give them all the points necessary, as an attorney, to protect them in the purchase, which I did.

199 Answer objected to as being hearsay and as relating to communications between attorney and client.

Int. 6. Did you make an examination of the abstracts and deeds to those lands on behalf of William Leighton and the plaintiffs?

Ans. Yes, sir.

Int. 7. Who was acting for Mr. Wallace at the time the sale was made, besides himself?

Ans. The codefendant, E. R. Ford.

Int. 8. Did you hear any conversation between Col. Leighton and the plaintiffs, or any of them, on the one part, and Mr. Ford and Mr. Wallace, on the other; if so, when and where were those conversations held? State fully.

Ans. Yes, sir. I heard conversations respecting the purchase and sale of certain lands between William Leighton, acting
200 for the plaintiffs and himself, and E. R. Ford and the defendant, John A. Wallace. The conversations which I heard were in my office, which was also the office of William Leighton, in the city of Keokuk, Lee county, Iowa. My recollection, is that one morning, the date of which I cannot specifically state, E. R. Ford came into the office of William Leighton and my office and informed Mr. Leighton in my presence generally that Mr. Wallace was in the city. I believe that Mr. Leighton and Mr. Ford went out of the office after some other words passed between them, and my remembrance is that before dinner—I would not be positive about that—that same day, in the

morning, that Mr. Wallace and Mr. Ford and Col. Leighton
201 met, as if by appointment, in our office, Mr. Wallace bringing with him a satchel or grip-sack which he opened *which he opened* and took out papers, after some conversation between him and Mr. Ford and Col. Leighton, in our office, and the papers were abstracts of lands and deeds to lands which it seemed that Col. Leighton had selected from the lands that Mr. Wallace said he had, and either at that time or with what had before occurred. Col. Leighton selected out the tracts of land which he desired to purchase from what Mr. Wallace offered him. The deeds were examined by me, and then, at that time, I partially examined the abstracts. When it was found that I could not finish the whole examination at that
202 time—some time after my dinner hour—we adjourned till after dinner. I examined all the abstracts and examined all the deeds, and made my notes upon the same in the presence of Mr. Wallace and of Col. Leighton. I am not positive that Mr. Ford was there in the afternoon. He may have been or he may not. There was some defect or defects in some of the papers. What they were I cannot recollect at this time. These I insisted should be perfected before the title to the land would be perfect, in my opinion. Mr. Wallace rather objected; said he would not have time to wait so long on these matters. After considerable conversation about the lands and what he paid for them and the price that he
203 paid, he went out—in the afternoon. My remembrance is that he left his grip-sack there, as he had also done during the noon hour, in my office. Shortly afterward Col. Leighton went out, and they came in later in the evening—Mr. Wallace and Col. Leighton; both of them came into the office. Mr. Wallace took his grip-sack and went out, and Col. Leighton with him, in my remembrance. After that—the next day—Mr. Wallace came in while Col. Leighton was out. Mr. Ford also came in when Col. Leighton was out. Then they met at the office again, as by appointment—before dinner, on the next day—and it was decided upon this what should be done; that the title should be perfected; that the deeds
204 should be sent to New York, my remembrance is, to be perfected. During the negotiations Mr. Wallace and Mr. Ford were in the office frequently, as well as Col. Leighton, talking with Col. Leighton about the transaction.

Int. 9. I will ask you to state whether or not you at any time ever heard anything said about a loan between these parties?

Ans. No, sir.

Int. 10. How did they speak of the transaction that was being had between them in reference to the land?

Ans. A sale and a purchase.

Int. 11. Did you hear Mr. Wallace state, at any time, what he had given for these lands?

Ans. Yes, sir.

Int. 12. What did he say on that subject?

205 Ans. He had given Missouri scrip, war scrip, or obligations issued by the State of Missouri for certain unsettled claims

that had accrued to divers persons in the State of Missouri during the rebellion of 1861–'5.

Int. 13. I will ask you whether at any time you ever heard Col. Leighton speak of this transaction with Mr. Wallace as a loan?

Ans. No, sir; I did not.

Int. 14. Did you at any time ever hear any of the plaintiffs speak of it as a loan?

Ans. I had but one general conversation with Judge Johnstone and Mr. Leighton. I do not believe that I had any conversation with Mr. Conable or Mr. Davis, although I knew they were interested in the purchase, because Judge Johnstone told me. Judge Johnstone was very particular that I should be very particular
206 and careful about it; that they wanted a perfect title to the land, and only referred to it as a purchase from Mr. Wallace.

The conversation between the witness and Judge Johnstone, one of the plaintiffs, objected to as hearsay and as incompetent, irrelevant, and immaterial.

Int. 15. State what, if you know, Mr. Leighton knew about the option contract that was given to Mr. Ford being for the benefit of Mr. Wallace.

Ans. I don't know anything about that—what he knew about it. He never stated anything to me about it. It was, as I understood, Mr. Ford's option. I may have known of the occurrence. He did not consult me about the matter or refer to it at all.

Int. 16. You heard him speak of the option that was to be
207 given to Mr. Ford?

Ans. Yes, sir; Mr. Ford was to have an option.

Int. 17. But you never heard of it as being given for the benefit of Mr. Wallace?

Ans. No, sir.

The examination-in-chief on the part of the complainants being now closed, the witness was cross-examined on the part of the defendants as follows:

Cross-examination by Mr. COLLIER:

Int. 1. Did you hear all the conversation that occurred between Mr. Wallace and Mr. Ford and Col. Leighton with reference to the transaction?

Ans. I think I did—all that occurred in my office.

Int. 2. Was there any conversation in your office about the option contract that you have mentioned?

Ans. Yes, sir.

208 Int. 3. State the circumstances under which that was agreed upon.

Ans. After Mr. Wallace had been there on that day and they had talked over the sale and purchase of that land—the land had been selected and the abstracts had been examined by myself, *so* well as the deeds, and the comments made and the defects pointed out—Mr. Leighton consulted me upon the effect of giving an option

for the purchase of those lands to Mr. Ford, and desired it in such a way that it would be unnecessary to foreclose the option contract, and that Mr. Ford should not have the right of redemption and other rights that pertain to a mortgage in our State. I told
209 him specifically what I thought should be done and gave him the general form of the contract that should be used; went to my drawer and took out a printed form of contract, made interlineations and erasures so as to cover this particular case, suggested that this should be the form, and gave it to Col. Leighton. Afterwards all that I heard of or respecting the option was that it was given to Mr. Ford.

Int. 4. What was the consideration to Mr. Ford in the conversation?

Ans. It was that he should pay back to Col. Leighton and these people so much money. The amount I do not remember—the amount of money that he was to give for the land I do not remember,
210 but that he had a certain time to do it in, and that time was the essence of the contract. My advice to those parties was that they were to hold possession of the land till the money was paid; that was all specified in the form that I gave them.

Int. 5. Was that an agreement to pay back upon the money that Judge Johnstone and the others were paying to Mr. Ford and Mr. Wallace for the land in order to get the land back?

Ans. No, sir. My understanding of that from Col. Leighton was that they gave to Mr. Ford the option of the purchase of the land at an increased price over what they were paying for the land, and Col. Leighton expressed it that that was one of the things
211 that induced, not himself so much, but induced the other parties to be willing to purchase it at the price they were offering for the land, and I knew that Mr. Ford was a sharp, shrewd real estate dealer and was acquainted with our general laws, and he was willing, as I understood from himself, to take the contract and make it as strong as it could be made so as to protect Col. Leighton and Mr. Conable and Mr. Davis and Judge Johnstone; that was, if he did not comply with the terms of the contract he should not have any rights in the land whatever, and that they should not be compelled to foreclose it upon him.

Int. 6. Did you draw up the answer for Mr. Ford in this case?

Ans. Yes, sir.

212 Int. 7. Is your name signed to it as attorney?

Ans. I am under the impression that it is. He so directed me to do.

Int. 8. Were you paid for your services in drawing up the answer by Mr. Ford and Mr. Johnstone?

Ans. I have not been paid by any party.

Int. 9. Did you make any charge against any party for it; if so, whom?

Ans. I don't believe I have. I don't remember making any charge against any of them.

Int. 10. Were you in any way requested by Judge Johnstone or Mr. Davis or Mr. Conable to draw up that answer?

Ans. Yes, sir. I was requested by Judge Johnstone or Mr. Davis or Mr. Conable to draw up that answer, as well as by Mr. Ford.

Int. 11. Have you ever seen the option contract that was
213 given to Mr. Ford, as a matter of fact?

Ans. The original?

Int. 12. Yes, sir.

Ans. No, sir; not that I remember of. I have seen a copy of it as connected with the petition

Int. 13. Is that the same kind of a contract that you recommended these gentlemen to give to Mr. Ford?

Ans. No, sir; it is not. It is not so strong as the one that I recommended.

Int. 14. Was Mr. Wallace present at any of the conversations or at the conversation in which this option contract was talked about?

Ans. No, sir.

Int. 15. Were you present when the matter was finally closed up and the money paid at the savings bank?

Ans. No, sir.

Int. 16. Did you hear Col. Leighton say anything to
214 Mr. Ford, in any of these conversations, to the effect that they could not loan money upon lands of that kind because of the cost and expense of foreclosing?

Ans. No, sir; I did not.

Int. 17. You did not understand that Mr. Ford gave them anything—any consideration—for the privilege of buying this land within a certain time?

Ans. Yes, sir; I understood that he was to give them an increased price over what they purchased it at.

Int. 18. That was, if he bought it he was to pay an increased price?

Ans. Yes, sir; if he consummated the option contract he was to pay an increased price.

Re-examination by Mr. HAGERMAN:

215 Int. 1. You had known Mr. Ford previous to that time as a real estate dealor and speculator, had you?

Ans. Yes, sir.

Recross-examination by Mr. COLLIER:

Int. 1. You knew, also, that he speculated without either real estate or money, did you not—as a rule?

Ans. I understood that he was at one time, in 1857, very wealthy and was a banker; latterly that he had gone through bankruptcy. At that time was perfectly free from debt and had means with which to purchase lands.

It is agreed by counsel for the respective parties that the foregoing deposition, when transcribed from the short-hand notes, as
216 above, may be delivered by the reporter to counsel for complainants.

I, W. R. Sellon, short-hand reporter, do hereby certify that, in accordance with agreement of parties, I caused to come before me, at the office of Messrs. Hagerman, McCrary & Hagerman, in the city of Keokuk, in the county of Lee and State of Iowa, as a witness in the cause now pending in the circuit court of the United States for the district of Iowa, Central Division, at Des Moines, in which Edward Johnstone, A. L. Conable, C. F. Davis are complainants and John A. Wallace and E. R. Ford are defendants, one W. B. Collins, who was there, on the ninth day of September, A. D. 1882, examined on the part of the said complainants by Mr. James
217 Hagerman, of counsel for complainants, and was cross-examined on the part of the said defendants by Mr. Collier, of counsel for defendants, said witness having been first duly sworn by Mr. A. J. McCrary, a notary public in and for Lee county, Iowa; and said examination was by me taken down in writing, in short-hand, and a true and correct transcript of said short-hand notes made by me and contained in the foregoing pages is herewith returned by me, in accordance with the agreement of parties, as the deposition of the said witness; the signing of said deposition by the witness, final oath, and all other informalities being waived by the said parties by their counsel.

(Signed) W. R. SELLON,
Short-Hand Reporter.

218 (Endorsed:) 1926. Johnstone *vs.* Wallace. Deposition of W. B. Collins. Filed May 16, 1883. E. R. Mason, clerk.

219 *Stipulation.*

In the Circuit Court of the United States for the District of Iowa, Central Division, at Des Moines.

EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS
vs.
JOHN A. WALLACE and E. R. FORD.

It is hereby agreed by the parties hereto that the deposition of John A. Elliott may be taken by any notary public on the interrogatories and cross-interrogatories hereto attached.

Aug. 25, 1882.

(Signed) CRAIG, COLLIER & CRAIG,
Att'ys for Def't Wallace.
HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Complainants.

In Chief.

Questions to be propounded to John A. Elliott.

220 Int. 1. What is your name, age, place of residence, and occupation?

Int. 2. How long have you lived at your present residence?

Int. 3. Were you acquainted with the market value of wild lands

in Northern Iowa in the month of February, 1875; and, if so, what was such market value? State your means of knowledge.

Int. 4. State specially whether you were generally acquainted with the value of wild lands in Clay county and Sioux county at or about the above date; if so, state your means of knowledge.

Int. 5. Was there a market value for wild lands in those counties, say in large tracts, at that time; and, if so, what was that value? State fully.

Int. 6. Were you acquainted with the following-described
221 lands in Clay county, Iowa:

Sec. 36, twp. 94, R. 44=640 acres;

and the following in Sioux county, Iowa:

Sec. 10, twp. 94, R. 36	=640 acres,
" 18, " 94, " 36	=624 "
W. ½ 8, " 94, " 37	=320 "
N. ½ S. E. ¼ sec. 13, twp. 94, R. 37	=480 "
E. ½ sec. 17, twp. 94, R. 37	=320 "
S. W. ¼ sec. 35, twp. 94, R. 37	=160 "

on or about February 17, 1875; and, if so, do you know what their market value was at that time?

Int. 7. Was there any difference in the market value of said lands sold in a lump for cash or sold in small tracts? If so, state the difference in the prices and the cause thereof. State fully.

Int. 8. State how well you knew the lands described in question 6 in February, 1875, and what relation you sustained to them.

Int. 9. State anything that you may know of interest to
222 either party as fully as if you had been specially interrogated.

(S'g'd) HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Complainants.

Cross-Interrogatories to be Propounded to John A. Elliott, on Behalf of Defendant Wallace.

Int. 1. Have you not been agent of Edward Johnstone, C. F. Davis, or A. L. Connable, or some one or more of them, for the sale of the lands, or some of them, described in direct interrogatory six (6) above, and as such agent have you not sold some of said lands?

Int. 2. If you say you have sold some of said lands, tell when you sold them and at what price. Give date of sale and price of each piece.

Int. 3. Have you received any letters from any one in regard to the taking of your evidence in this case or in regard to the
223 controversy? If yea, attach copies of such letters or original as part of your answer to this question.

Int. 4. What are the lands described in interrogatory six (6) above reasonably worth now?

(Signed) GRAIG, COLLIER & GRAIG,
Att'ys for Defendant Wallace.

224 *Deposition of John A. Elliott.*

In the Circuit Court of the United States for the District of Iowa, Central Division, at Des Moines.

EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS

vs.

JOHN A. WALLACE and E. R. FORD.

Deposition of witness produced, sworn, & examined at Des Moines, in the county of Polk and State of Iowa, before me, W. W. Barclay, a notary public in and for said county and State, in a certain cause now pending in the circuit court of the United States for the district of Iowa, central division, at Des Moines, between Edward Johnson, A. L. Connable, and C. F. Davis, plaintiffs, and John A. Wallace and E. R. Ford, defendants, on the part
225 of the plaintiffs, and by virtue of the stipulation of counsel, hereto annexed.

JOHN A. ELLIOTT, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

In chief:

Int. 1. What is your name, age, place of residence, and occupation?

Ans. 1. My name is John A. Elliott; my age is fifty-seven years; my residence, Des Moines, Iowa; my occupation is that of president of the State Insurance Company of Iowa.

Int. 2. How long have you lived at your present residence?

Ans. 2. Eighteen years.

Int. 3. Were you acquainted with the market value of wild lands in Northern Iowa in the month of February, 1875; and, if so, what was such market value? State your means of knowledge.

Ans. 3. I was acquainted with the value of such lands at
226 the time mentioned. Its value was from one and a half dollars to three dollars per acre. As land commissioner for the Des Moines Valley Railroad Company I had frequently visited and examined very extensively lands through the portion of the State mentioned.

Int. 4. State specially whether you were generally acquainted with the value of wild lands in Clay and Sioux counties at or about the above date. If so, state your means of knowledge.

Ans. 4. I think I was, having bought and sold lands in both of these counties.

Int. 5. Was there a market value for wild lands in those counties, say in large tracts, at that time; and, if so, what was that value? State fully.

Ans. 5. From 1873 to 1878 the price of wild lands in North-
227 western Iowa was very much depressed, and there was very little selling. Lands were offered me for sale in Sioux, Clay,

and Palo Alto counties in 1875 and 1876 at from one & $\frac{75}{100}$ to two dollars per acre.

Int. 6. Were you acquainted with the following-described lands in Clay county, Iowa:

Sec. 36, twp. 94, R. 44 = 640 acres;

and the following in Sioux county:

Sec. 10, twp. 94, R. 36	= 640 acres,
" 18, " 94, " 36	= 624 "
W. $\frac{1}{2}$ 8, " 94, " 37	= 320 "
N. $\frac{1}{2}$ & S. E. $\frac{1}{4}$ sec. 13, twp. 94, R. 37	= 480 "
E. $\frac{1}{2}$ sec. 17, twp. 94, R. 37	= 320 "
S. W. $\frac{1}{4}$ sec. 35, twp. 94, R. 37	= 160 "

on or about Feb. 17th, 1875; and, if so, do you know what their market value was at that time?

Ans. 6. I had some knowledge of those lands. They were among the Des M. V. R. R. indemnity lands. They are about aver-
228 age prairie lands and of about the same value, as I have stated in answer to the fifth interrogatory.

Int. 7. Was there any difference in the market value of said lands sold in a lump for cash or sold in small tracts? If so, state the difference in price and the cause thereof; state fully.

Ans. 7. There was a great difference in the prices. Large amounts were offered for cash at about the figures I have named, while lands sold in small amounts on long-time contracts by railroad companies and others were sold at double those figures.

Int. 8. State how well you knew the lands described in question 6 in Feb., 1875, and what relation you sustained to them.

Ans. 8. These lands belonged to the Des Moines Valley R.
229 R. Co. I was land commissioner for said company and had examined the same for said company.

Int. 9. State anything that you may know of interest to either party as fully as if you had been specially interrogated.

Ans. 9. The minimum price fixed by the D. M. V. R. R. Co. on their lands was five dollars per acre on seven years' time. As assignee of F. R. West & Sons, I had the sale of W. $\frac{1}{2}$ sec. 26, 96, 46; N. E. $\frac{1}{4}$ sec. 9, 96, 46; N. E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ sec. 9, 96, 46, in Sioux county. I tried for two years to dispose of them at private sale, and advertised the same and finally sold the same to Mr. Eldridge, of Davenport, for $2.25 per acre June the 7th, 1880.

Cross-interrogatories & answers:

X Int. 1. Have you not been agent of Edward Johnstone,
230 C. F. Davis, or A. L. Connable, or some one or more of them, for the sale of the lands or some of them described in the direct interrogatory six (6) above, and as such agent have you not sold some of said lands?

Ans. 1. I have not been agent for any of said parties for the sale of above-described lands. I have bought and sold lands for Johnstone & Davis on joint account in Northwestern Iowa.

X Int. 2. If you say you have sold some of said lands, tell when you sold them and at what price; give date of sale and price of each piece.

Ans. 2. Having surrendered to the D. M. V. R. R. Co. all the books pertaining to the office of land commissioner for said company, I cannot remember whether these particular lands had
231 been sold during my connection with the company. If they were, I am unable to state without reference to said books to whom or at what price they were sold. The greater portion of lands sold by me for the company were exchanged for the bonds of said company, and said bonds at that time were very much depreciated in value.

X Int. 3. Have you received any letters from any one in regard to the taking of your evidence in this case or in regard to the controversy. If yea, attach copies of such letters or original as part of your answer to this question.

Ans. 3. I have had some letters from Edward Johnstone, of Keokuk, asking me of the price of lands in Northwestern Iowa in 1875, and wishing to know names of parties who could give him
232 the information. Such letters not being among those of importance to me, I did not file them.

X Int. 4. What are the lands described in interrogatory six (6) above reasonably worth now?

Ans. 4. I have had but little personal knowledge of that portion of the State for the last five years and cannot say what they are worth now, as their value depends largely on surrounding improvements.

(S'g'd) JNO. A. ELLIOTT.

I, W. W. Barclay, a notary public in and for Polk county, Iowa, do hereby certify that John A. Elliott, whose residence is in the city of Des Moines, county of Polk and State of Iowa, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the aforesaid cause; that deponent was exam-
233 ined and his examination reduced to writing by me, W. W. Barclay, who is neither of the parties, attorney for either of them, or in any manner interested in the event of said suit, and after being by me carefully read over to the deponent the same was sworn and subscribed to by the said deponent before me and in my presence on the 9th day of September, 1882, between the hours of 9 a. m. and six p. m. of said day, at Des Moines, Polk county, Iowa.

Given and certified this 9th day of September, A. D. 1882, under my hand and notarial seal.

[W. W. Barclay, Iowa, Notarial Seal.]

(Signed) W. W. BARCLAY,
Notary Public.

STATE OF IOWA, } ss:
County of Polk, }

I, W. W. Barclay, a notary public within and for said
234 county and State, do hereby certify that in pursuance of the annexed stipulation, at my office, in the city of Des Moines, in said county and State, I proceeded to take the deposition of John A. Elliott, who was by me sworn and examined, and such examination reduced to writing by me, who am neither one of the parties, their attorney, or in any way interested in the event of the suit, and after being by me read over to said deponent the same was subscribed and sworn to by said witness in my presence, and his said deposition is now herewith returned.

Given under my hand and official seal hereto affixed at Des Moines, Iowa, this 9th day of September, A. D. 1882.

[W. W. Barclay, Iowa, Notarial Seal.]

(S'g'd) W. W. BARCLAY,
Notary Public.

235 (Endorsed:) U. S. circuit court, central division, Iowa. Edward Johnstone *et al. vs.* John A. Wallace *et al.* Deposition of Jno. A. Elliott. Notary fees, $3.00. W. W. Barclay, notary public. Opened and filed Oct. 17, 1882. E. R. Mason, clerk.

236 *Stipulation.*

In the United States Circuit Court for District of Iowa, Central Division, at Des Moines.

EDWARD JOHNSTONE, A. L. CONNABLE, and C. F. DAVIS
vs.
JOHN A. WALLACE and E. R. FORD.

It is hereby agreed by the parties hereto that the deposition of Jas. M. Hoskins may be taken before any notary public on the interrogatories and cross-interrogatories attached hereto.

Aug. 25, '82.

(Signed) CRAIG, COLLIER & CRAIG,
Att'ys for Def't Wallace.
HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Complainants.

JAS. M. HOSKINS,
Sioux Rapids, Buena Vista Co., Iowa.

237 *Questions-in-Chief to be Propounded to Jas. M. Hoskins.*

Int. 1. What is your name, age, place of residence, and occupation?

Int. 2. How long have you lived at your present residence?

Int. 3. Were you acquainted with the market value of wild lands in Northern Iowa in the month of February, 1875; and, if so, what was such market value? State your means of knowledge.

Int. 4. State specially whether you were generally acquainted with the value of wild lands in Clay and Sioux counties at or about the above date; if so, state your means of knowledge.

Int. 5. Was there a market value for wild lands in those counties, say in large tracts, at that time; and, if so, what was that value? State fully.

Int. 6. Were you acquainted with the following-described
238 lands in Clay county, Iowa:

Sec. 36, twp. 94, R. 44 = 640 acres;

and the following in Sioux county, Iowa:

Sec. 10, twp. 94, R. 36	= 640 acres,
Sec. 18, twp. 94, R. 36	= 624 "
W. ½ 8, " 94, " 37	= 320 "
W. ½ S. E. ¼ sec. 13, twp. 94, R. 37	= 480 "
E. ½ S. 17, twp. 94, R. 37	= 320 "
S. W. ¼, sec. 35, twp. 94, R. 37	= 160 "

in or about Feb. 17, 1875; and, if so, do you know what was their market value at that time?

Int. 7. Was there any difference in the market value of said lands sold in a lump for cash or sold in small tracts? If so, state the difference in the prices and the cause thereof; state fully.

Int. 8. State how well you knew the lands described in question 6 in February, 1875, and what relation you sustained to them.

239 Int. 9. State anything that you may know of interest to either party as fully as if you had been specially interrogated.

HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Complainants.

Cross-interrogatories to be Propounded to Jas. M. Hoskins on Behalf of Defendant Wallace.

X Int. 1. Have you not been agent of Edward Johnstone, C. F. Davis, or A. L. Conuable, or some one or more of them, for the sale of the lands or some of them described in direct interrogatory 6 above, and as such agent have you not sold some of said lands?

X Int. 2. If you say you have sold some of said lands, tell when you sold them and at what price? Give the date of sale and price of such piece.

240 — Int. 3. Have you received any letters from any one in regard to the taking of your evidence in this case or in regard to the controversy? If yea, attach copies of such letters or the original as part of your answer to this question.

— Int. 4. What are the lands described in interrogatory 6 above reasonably worth now?

(Signed) CRAIG, COLLIER & CRAIG,
For Def't Wallace.

Deposition of witness produced, sworn, and examined at Sioux Rapids, in the county of Buena Vista and State of Iowa, before me, F. H. Helsell, a notary public in and for said county and State, in pursuance of *of* the annexed stipulation, to me directed as a notary public in and for said county and State, in an action
241 now pending in the United States circuit court for district of Iowa, central division, at Des Moines, wherein Edward Johnstone, A. L. Connable, and C. F. Davis are plaintiffs and John A. Wallace and E. R. Ford are defendants.

JAMES M. HOSKINS, being produced, sworn, and examined on part of the pl'ffs, deposed as follows:

Examination-in-chief:

Int. one. What is your name, age, place of residence, and occupation?

Ans. 1. James M. Hoskins; about 36; Sioux Rapids, Iowa; banker and real estate dealer.

Int. 2. How long have you lived at your present residence?

Ans. 2. About 13 years.

Int. 3. Were you acquainted with the market value of wild lands in Northern Iowa in the month of February, 1875; and, if
242 so, what was such market value? State your means of knowledge.

Ans. 3. I was. I was a real estate dealer at that time, buying and selling lands and selling lands on commission, and lands away from town was only worth from $1.50 per acre to $3.00. I sold choice lands close to town on long time from $2.50 to $4.00 about that time.

Int. 4. State specially whether you were generally acquainted with the value of wild lands in Clay and Sioux counties at or about the above date; if so, state your means of knowledge.

Ans. 4. I was well acquainted with wild lands in Clay county at above date, as I was dealing in them; do not know anything about Sioux Co. lands.

Int. 5. Was there a market value for wild lands in those
243 counties, say in large tracts, at that time; and, if so, what was that value? State fully.

Ans. 5. There was but little market value for any lands at this time, and what was sold was very low. If in large tracts, the buyer could generally fix his own price, and prices were from $1.50 to $2.25 per acre. There was really no market value for large tracts.

Int. 6. Were you acquainted with the following-described lands in Clay county, Iowa:

Sec. 36, t'p 94, R. 44=640 acres;

and the following in Sioux county, Iowa:

Sec. 10, t'p 94, R. 36,	640 acres.
Sec. 18, t'p 94, R. 36,	624 "
W. ½ 8, " 94, " 37,	320 "

N. ½ & S. E. ¼ sec. 13, t'p 94, R. 37, 480 acres.
E. ½ sec. 17, t'p 94, R. 37 320 "
S.W. ¼ sec. 35, t'p 94, R. 37 160 "

in or about Feb. 17, 1875; and, if so, do you know what was
244 their market value at that time?

Ans. 6. Sec. 36, 94, 44, is in Sioux county and sec. 10, 94, 36, is in Clay Co., and the 5 description- following. I was well acquainted with those in Clay Co. at that time, being near to Sioux Rapids, and was selling land close by them. I think I helped to sell some for John A. Wallace about this time for $2 per acre, near these same lands, amounting to 1,720 acres, for $2 per acre, and we thought we had made a good sale at that price, and if these lands had been sold at that time in a body, $1.50 to $2.00 per acre, I think, would have been a fair price for them.

Int. 7. Was there any difference in the market value of said lands sold in a lump for cash or sold in small tracts? If so,
245 state the difference in the prices and the cause thereof; state fully.

Ans. 7. There has always been a difference here between lands sold in lump for cash and for lands sold in small tracts. When wild lands sold at $1.50 to $3.00 in large tracts they would generally sell in small ones at $2.50 to $4.00, being generally sold on long time in small tracts at low rates of interest, and were generally the choice pieces of the large tracts.

Int. 8. State how well you knew the lands described in question 6 in February, 1875, and what relation you sustained to them.

Ans. 8. I knew the lands at this time by having seen them in showing other lands. I believe that at this time I had nothing to do with them, either as agent or otherwise.

246 Int. 9. State anything you may know of interest to either party as fully as if you had been specially interrogated.

Ans. 9. ——.

The following cross-interrogatories were propounded to witness, JAMES M. HOSKINS, on behalf of defendant Wallace:

On cross-examination witness testified as follows:

Cross-int. 1. Have you not been agent of Edward Johnson, C. F. Davis, or L. Connable, or some one or more of them, for the sale of the lands or some of them described in direct Int. 6 above, and as such agent have you not sold some of said lands?

Ans. 1. I have.

247 X Int. 2. If you say you have sold some of said lands tell when you sold them and at what price. Give date of sale and price of each piece.

Ans. 2. I have sold some of the above lands, principally within the last 2 years and in small tracts, at $4, $5, and $6 per acre. In tracts of quarter sections, principally, at $5 on long time. Cannot give date of sale, but it was within about 2 years and since our railroad excitement.

X Int. 3. Have you received any letters from any one in regard to the taking of your evidence in this case or in regard to the controversy? If yea, attach copies of such letters or the original as part of your answer to this question.

Ans. 3. Yes: I have received several letters from Edward
248 Johnstone, of Keokuk, Iowa, for whom I have been doing business for some time past, but these letters have not been preserved by me, but I can state that their contents were substantially asking information about the price of land per acre in Clay Co., Iowa, when sold in large tracts for cash in the year 1875.

X Int. 4. What are the lands described in Int. 6 above reasonably worth now?

Ans. 4. —

Sec. 10, 94, 36, is worth about	$3,200 00
" 18, 94, 36, " "	3,200 00
W. ½ 8, 94, 37, " "	1,920
N. ½ & S. E. ¼ 13, 94, 37, is worth about	2,560
E. ½ 17, 94, 37, is worth about	1,920
S. W. ¼ 35, 94, 37, " "	800
	$13,600 00

The others I know nothing about. These prices I fix this way owing to the building of a railroad through here and making them accessible to markets, &c., &c.

(S'g'd) JAMES M. HOSKINS.

249 Sworn to before me and subscribed in my presence by the said James M. Hoskins this 5 day of Sept., 1882.

(S'g'd) F. H. HELSELL,
Notary Public.

STATE OF IOWA, }
Buena Vista Co., } *ss:*

I, F. H. Helsell, a notary public in and for said county & State, do hereby certify that, in pursuance of the annexed stipulation for taking of deposition of James M. Hoskins, I caused to come before me at my office, in Sioux Rapids, in said county & State, on this 5 day of Sept., A. D. 1882, between the hours of 6 & 7 in the afternoon, James M. Hoskins, who was then and there duly sworn by me and examined and his examination reduced to writing, and after being read over to said witness by me the same was subscribed and sworn to by him in my presence, and his deposition is
250 now herewith returned; and I further certify that no other party than the witness and myself was present at his examination.

Given under my hand and official seal hereto annexed at Sioux Rapids, in Buena Vista Co., Iowa, this 5 day of Sept., A. D. 1882.

[Seal F. H. Helsell, Iowa.]

(S'g'd) F. H. HELSELL,
Notary Public in & for Buena Vista Co., Iowa.

N. ½ & S. E. ¼ sec. 13, t'p 94, R. 37,	480 acres.
E. ½ sec. 17, t'p 94, R. 37	320 "
S.W. ¼ sec. 35, t'p 94, R. 37	160 "

in or about Feb. 17, 1875; and, if so, do you know what was
244 their market value at that time?

Ans. 6. Sec. 36, 94, 44, is in Sioux county and sec. 10, 94, 36, is in Clay Co., and the 5 description- following. I was well acquainted with those in Clay Co. at that time, being near to Sioux Rapids, and was selling land close by them. I think I helped to sell some for John A. Wallace about this time for $2 per acre, near these same lands, amounting to 1,720 acres, for $2 per acre, and we thought we had made a good sale at that price, and if these lands had been sold at that time in a body, $1.50 to $2.00 per acre, I think, would have been a fair price for them.

Int. 7. Was there any difference in the market value of said lands sold in a lump for cash or sold in small tracts? If so,
245 state the difference in the prices and the cause thereof; state fully.

Ans. 7. There has always been a difference here between lands sold in lump for cash and for lands sold in small tracts. When wild lands sold at $1.50 to $3.00 in large tracts they would generally sell in small ones at $2.50 to $4.00, being generally sold on long time in small tracts at low rates of interest, and were generally the choice pieces of the large tracts.

Int. 8. State how well you knew the lands described in question 6 in February, 1875, and what relation you sustained to them.

Ans. 8. I knew the lands at this time by having seen them in showing other lands. I believe that at this time I had nothing to do with them, either as agent or otherwise.

246 Int. 9. State anything you may know of interest to either party as fully as if you had been specially interrogated.

Ans. 9. ——.

The following cross-interrogatories were propounded to witness, JAMES M. HOSKINS, on behalf of defendant Wallace:

On cross-examination witness testified as follows:

Cross-int. 1. Have you not been agent of Edward Johnson, C. F. Davis, or L. Connable, or some one or more of them, for the sale of the lands or some of them described in direct Int. 6 above, and as such agent have you not sold some of said lands?

Ans. 1. I have.

247 X Int. 2. If you say you have sold some of said lands tell when you sold them and at what price. Give date of sale and price of each piece.

Ans. 2. I have sold some of the above lands, principally within the last 2 years and in small tracts, at $4, $5, and $6 per acre. In tracts of quarter sections, principally, at $5 on long time. Cannot give date of sale, but it was within about 2 years and since our railroad excitement.

X Int. 3. Have you received any letters from any one in regard to the taking of your evidence in this case or in regard to the controversy? If yea, attach copies of such letters or the original as part of your answer to this question.

Ans. 3. Yes: I have received several letters from Edward
248 Johnstone, of Keokuk, Iowa, for whom I have been doing business for some time past, but these letters have not been preserved by me, but I can state that their contents were substantially asking information about the price of land per acre in Clay Co., Iowa, when sold in large tracts for cash in the year 1875.

X Int. 4. What are the lands described in Int. 6 above reasonably worth now?

Ans. 4. —

Sec. 10, 94, 36, is worth about	$3,200 00
" 18, 94, 36, " "	3,200 00
W. ½ 8, 94, 37, " "	1,920
N. ½ & S. E. ¼ 13, 94, 37, is worth about	2,560
E. ½ 17, 94, 37, is worth about	1,920
S. W. ¼ 35, 94, 37, " "	800
	$13,600 00

The others I know nothing about. These prices I fix this way owing to the building of a railroad through here and making them accessible to markets, &c., &c.

(S'g'd) JAMES M. HOSKINS.

249 Sworn to before me and subscribed in my presence by the said James M. Hoskins this 5 day of Sept., 1882.

(S'g'd) F. H. HELSELL,
Notary Public.

STATE OF IOWA, }
Buena Vista Co., } *ss:*

I, F. H. Helsell, a notary public in and for said county & State, do hereby certify that, in pursuance of the annexed stipulation for taking of deposition of James M. Hoskins, I caused to come before me at my office, in Sioux Rapids, in said county & State, on this 5 day of Sept., A. D. 1882, between the hours of 6 & 7 in the afternoon, James M. Hoskins, who was then and there duly sworn by me and examined and his examination reduced to writing, and after being read over to said witness by me the same was subscribed and sworn to by him in my presence, and his deposition is
250 now herewith returned; and I further certify that no other party than the witness and myself was present at his examination.

Given under my hand and official seal hereto annexed at Sioux Rapids, in Buena Vista Co., Iowa, this 5 day of Sept., A. D. 1882.

[Seal F. H. Helsell, Iowa.]

(S'g'd) F. H. HELSELL,
Notary Public in & for Buena Vista Co., Iowa.

Fees for deposition, $5.00. Unpaid.

(Endorsed:) Deposition James M. Hoskins, Edward Johnstone, A. L. Connable, C. F. Davis *vs.* John A. Wallace & C. R. Ford. Opened and filed Oct. 17, 1882. E. R. Mason, clerk.

251 And the defendants, to sustain the issues in their behalf, introduced upon the hearing in said cause the following testimony, to wit:

252 *Stipulation.*

In the Circuit Court of the United States for the District of Iowa, Central Division, at Des Moines.

EDWARD JOHNSTONE and Others

against

JOHN A. WALLACE and E. R. FORD, Defendants.

It is hereby agreed in the above-entitled cause—

1st. That the defendant, John A. Wallace, shall take his testimony-in-chief in above case within twenty days from this date.

2nd. That the complainants shall take their testimony-in-chief within fifty days from this date.

3rd. That the said defendant shall have ten days after the testimony of complainants-in-chief to take his testimony in rebuttal.

We agree to stipulate as to time, place, and manner of tak-
253 ing evidence under this agreem't.

(S'g'd) HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Complainants.

(S'g'd) CRAIG, COLLIER & CRAIG,
Solicitors for Respondents.

JULY 11, 1882.

At the request of Fred. Barnett, short-hand reporter, the time of filing testimony for defendant Wallace is extended four days.

(S'g'd) HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Complainants.

254 *Stipulation.*

In the Circuit Court of the United States, Central Division, at Des Moines.

EDWARD JOHNSTONE and Others

vs.

JNO. A. WALLACE and E. R. FORD, Defendants.

It is agreed in this case that the testimony taken in short-hand may be transcribed by the short-hand reporter, and, if the witnesses should not be there then to sign, may be read without being signed,

and the fees of the short-hand reporters may be taxed as costs against the losing party same as depositions taken in long-hand.

July 22, 1882.

(Signed) HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Complainants.
CRAIG, COLLIER & CRAIG,
Att'ys for Defendants.

255 *Contract.*

Contract between Edward Johnstone, A. L. Connable, and C. F. Davis and Wm. Leighton, parties of the first part, and E. R. Ford, party of the second part, witnesseth:

That for a good and valuable consideration the said party of the second part has the option of purchasing for the period of sixty days from the date hereof of the said first parties the following real estate, to wit, all in the State of Iowa, in Sioux county, as follows:

Sec. 36, t'p 94, R. 44, 640 acres.

In Clay county as follows:

Sec. 10, t'p 94, R. 36, 640 acres;
Sec. 18, t'p 94, R. 36, 624 acres;
W. ½ 8, t'p 94, R. 37, 320 acres;
N. ½ & S. E. ¼ sec. 13, t'p 94, R. 37, 480 acres;
E. ½ sec. 17, t'p 94, R. 37, 320 acres;
S. W. ¼ sec. 35, t'p 94, R. 37, 160 acres—

upon the following terms, namely: If the said E. R. Ford or
256 his assignees hereof shall in said sixty days deposit or cause to be deposited to the credit of said parties of the first part, in the Keokuk Savings Bank of Keokuk, Iowa, the sum of fifty-eight hundred and seventy-six dollars or pay to them said amount in said city of Keokuk within said period of time, then the said parties of the first part (their wives joining) will make and deliver to said second party or his assigns a deed of aforesaid warranty against the claims of all persons claiming by, through, or under them or either of them, conveying all of said lands hereinbefore described to said second party or his assigns.

In testimony whereof the said parties hereto have here subscribed their names this 17th day of February, 1875.

257 (Signed) WM. LEIGHTON.
C. F. DAVIS.
EDWARD JOHNSTONE.
A. L. CONNABLE.
E. R. FORD.

STATE OF IOWA, }
County of Lee, } *ss:*

Be it remembered that on this 17th day of February, 1875, before me, Wm. Ballinger, a notary public in and for said county, personally appeared Wm. Leighton, C. F. Davis, Edward Johnstone, A. L. Connable, and E. R. Ford, who are personally known to me to be

the identical persons whose names are affixed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their voluntary act and deed.

In testimony whereof I have hereunto subscribed my name
258 and affixed my seal notarial the day and date above written.

(S'g'd) WM. BALLINGER,
Notary Public.

Filed for record the 4th day of June, A. D. 1875, at 8 o'clock p. m.
(S'g'd) A. H. CHENEY, *Recorder.*

For value received I hereby assign all my interest in the within option or contract, to which this is attached, to John A. Wallace.
Feb'y —, 1875.
(Signed) E. R. FORD.

Filed for record the 4th day of June, 1875, at 8 o'clock p. m.
(S'g'd) A. H. CHENEY, *Recorder.*

STATE OF IOWA, } *ss:*
Clay County, }

I, S. W. Dubois, recorder of deeds within & for said county, do hereby certify that the foregoing is a true and correct copy of the contract between Wm. Leighton, C. F. Davis, Edward Johnstone, A. L. Connable, parties of the first —, & E. R. Ford,
259 party of the second part, and the assignment thereof, as shown by the records of my office.

(S'g'd) S. W. DUBOIS, *Recorder.*

I hereby certify that this paper was offered in evidence in case of Johnstone *et al. vs.* John A. Wallace *et al.* as Ex. "1."
(S'g'd) FRED. P. BARNETT,
Notary Public.

Ex. 1. F. P. B.

260 In the Circuit Court of the United States, District of Iowa, Central Division, at Des Moines. In Equity.

EDWARD JOHNSTONE *et al.*, Complainants,
vs.
JOHN A. WALLACE *et al.*, Respondents.

Appearances: For complainants, Hagerman, McCrary & Hagerman; for respondent John A. Wallace, Craig, Collier & Craig, & H. C. Noyes; for respondent E. R. Ford, W. B. Collins.

Depositions of E. R. Ford, William Ballinger, and John A. Wallace, Taken on the Part of Respondent, John A. Wallace, by Fred. P. Barnett, Stenographer.

261 UNITED STATES CIRCUIT COURT CHAMBERS,
KEOKUK, IOWA, *July* 11, 1882.

In pursuance of the two stipulations heretofore attached, came before me, Fred. P. Barnett, a notary public in and for the county of

Lee and State of Iowa, the witnesses hereinafter named, who, being called and examined on the part of respondent, John A. Wallace, having been duly sworn, testified as follows:

E. R. FORD, called on the part of the respondent, John A. Wallace, having first been by me duly sworn, deposes and days:

Direct examination by Mr. COLLIER:

1. What is your name and place of residence?

Ans. My residence is St. Paul, St. Charles county, Missouri; age, 59 years—near 60 now.

262 2. Are you the same E. R. Ford made defendant in this suit?

Ans. I am.

3. Are you acquainted with John A. Wallace?

Ans. I am.

4. Where were you doing business 1875?

Ans. In St. Louis; principally in St. Louis, Mo.

5. I hand you a paper purporting to be a copy of a copy of a contract between Edward Johnstone, A. L. Connable, C. F. Davis, and William Leighton and yourself, which I now offer in evidence and attach the same as Exhibit "1" to your deposition. Please examine the same and state whether or not you had something to do with the transaction out of which that paper grew. It seems to be a certified copy from the recorder of the county up there where it was filed. We haven't the original here. I will read it to you.

263 (Here counsel reads Ex. 1.)

Ans. I believe it to be a correct copy of the contract in which I participated, as shown.

6. Where were the negotiations which resulted in that paper had; in what place where the negotiations had which resulted in this contract, Exhibit 1?

Ans. In what town, do you mean, or part of the town?

7. In what town?

Ans. In Keokuk.

8. How did you happen to come here to Keokuk in this matter?

Ans. Is it requisite that I should narrate a circumstantial account?

9. Yes. Give the circumstances fully which led to your coming here.

Objected to as incompetent, irrelevant, and immaterial.

Ans. I was keeping an office, or part of an office, in the
264 office of Mellen & Schwartz, a real estate office, in St. Louis, at that time, and associated in transactions frequently in which they were interested. Mr. Wallace——

10. That is, John A. Wallace?

Ans. Mr. John A. Wallace, the codefendant, was frequently there for business purposes and transactions with them; and Mr. Mellen or Mr. Schwartz, or, I may say, Mellen & Schwartz, approached me

or applied to me to know if money could be procured upon Iowa land, or how to procure money upon Iowa land, knowing that I was formerly an Iowa citizen, stating that Mr. Wallace was the owner of a list of lands, and wished to convert or realize or procure money upon them, and knowing, also, that I had *a* an ex-
265 tensive acquaintance here in more or less monied circles. I gave it as my opinion that money could be raised in Keokuk by placing the lands in such a way that they would be security, by sale or otherwise, in a satisfactory manner. I suppose—that is, now I am speaking from a recollection or speaking from my habit of doing business—I will say, it is a long time since, and I can't remember the words, but it was substantially to that effect, and in the conversation that ensued I detailed my methods of getting the money, as was my habit in all such transactions connected with Iowa. I represented that deeds of trust were not treated as such in Iowa, but as mortgages, and therefore a
266 short loan that was sought or desired could not be made upon a mortgage or a deed of trust which would be treated as a mortgage, because of the length of time it would take to enforce the payment, and suggested a method of realizing the money by selling the land with a privilege of repurchase, either by the individual or by some other method, if there was a desire to repurchase; that by offering the land at a price which would be attractive purchasers could be found, I had no doubt. That was the preliminary conversation with—I suppose it was with Major Mellen, as he generally introduced such subjects and did the talking.

11. Was Mr. Wallace present during the conversation?

267 Ans. Well, I can't say whether he was or not. I think not, however, at that time, because——

12. You did see him before you came to Keokuk?

Ans. This occurred in St. Louis, in the office, and I can't say whether Mr. Wallace was present at the time of the introduction of the subject to me or not. I presume not.

Complainants move to strike out all that part of the answer of witness purporting to give conversations between himself and Mellen & Schwartz or Wallace or either of them, because such conversations were not in the presence of any of the complainants, and therefore are hearsay testimony, and are immaterial and irrelevant.

13. Did you see Mr. Wallace before you came to Keokuk?

Ans. I did.

268 14. Did you have a conversation with him in regard to this matter before you came here?

Objected to as incompetent, irrelevant, and immaterial, and as hearsay.

Ans. Such conversation as I had with Mr. Wallace was in connection, more or less, with Mellen & Schwartz in regard to the method or means of success of realizing the money for Mr. Wallace upon the land, and it was implied or was substantially represented by them or Mr. Wallace as needed by him, and that he would be willing to pay

liberally for such services as could be rendered in procuring the money that he wanted; and it resulted in his proposing to
269 have me come up, pay my expenses—pay me a commission and pay my expenses here—if a loan or otherwise could be made, in assisting him to do it. I would say "or otherwise" because it was not then known just what could be done. This was all preliminary; I had not at that time ascertained of any loan. I ought, perhaps, say that before that I had opened a correspondence with Mr. Leighton, presenting the matter to him, and awaited his answer, which was favorable; upon which announcement we, Mr. Wallace and I, prepared and came up to this place.

16. Have you in your possession any letters that you received from Col. Leighton in regard to the matter?

Ans. I can't answer that question affirmatively or nega-
270 tively; I may have and I may not.

17. Will you examine, upon your return home, and forward any letters which you may have of Col. Leighton's, bearing upon this subject, to the notary?

Ans. I will try and do so. If I have now any letters they are packed away with some papers, miscellaneous papers, which are almost inaccessible, on account of having been transferred and moved and packed and repacked, and are almost inaccessible, and after the introduction of the matter to Col. Leighton the further business was by telegraph.

18. When you came to Keokuk who came with you, if any one?

Ans. At that time?

19. Yes, sir.

271 Ans. John A. Wallace, the codefendant in this case.

20. Please give in detail what occurred between you and Mr. Leighton or Mr. Johnstone—Edward Johnstone—A. L. Connable, or C. F. Davis or either of them with reference to this loan desired by Mr. Wallace, on your arrival in Keokuk, as fully as you can recollect the same.

Ans. Well, I can only speak from recollection of the details. I know substantially what was done, but I can only speak of the details from recollection. I called upon Mr. Leighton, introduced Mr. Wallace or presented Mr. Wallace to him. He made then the representations and exhibits for himself, and the negotiations were principally, if not altogether, between Mr. Leighton and Mr.
272 Wallace and Leighton, Mr. Davis, and Mr. Connable and Judge Johnstone. I myself took no part in the negotiations with the plaintiffs in the suit. I believe I took no part, except in the execution of that paper, Ex. 1—that contract.

21. Were you present at the conversation with Mr. Leighton that was had, that occurred between Mr. Wallace and Mr. Leighton, in reference to the matter?

Ans. I suppose I was frequently, because it lasted one or more days. I can't say how long.

22. State your recollection of what occurred between them in any of the conversations that you heard.

Complainants object to the witness detailing any conversa-
273 tion between himself and Mr. Leighton on the ground that Mr. Leighton is dead and such testimony is incompetent in this case as against the complainants—all of them or any of them; and, further, that such testimony is incompetent, irrelevant, and immaterial and hearsay.

Ans. I can't state specifically further than it was in affirmation of the course he had contemplated in placing or securing the disposition of the land or receiving means from the land.

23. What, if anything, was said in the conversation with Mr. Leighton in regard to taking a deed and giving a contract such as Exhibit 1 in preference to a mortgage upon the land as security.

Same objection as last above.

Ans. The objection to a mortgage was paramount and
274 final. The objection was final, and it ceased to be a question. The alternative was a disposition of the land, if the parties so consented, by conveyance, with a privilege of repurchase if the parties desired or any party desired, the lenders not desiring to buy lands, as was expressed, but preferring to sell at an advance—a moderate advance; hence they were willing to give the party or defendants or one of the defendants, if so expressed, the privilege of repurchasing the land within a given time and at a specified price, Mr. Wallace representing that he didn't wish to part with the lands finally because there was a good deal more money to him in them in repurchasing and handling them if he could do so, or to
275 a party that could do so.

24. What reasons, if any, were given or objections made to taking a mortgage as security for the money that Mr. Wallace desired on the lands by Mr. Leighton?

Same objection as last above.

Ans. The length of time that would necessarily be required to foreclose and realize upon that class of security.

25. In the negotiations you heard between Mr. Wallace and Mr. Leighton was Mr. Wallace desiring to absolutely sell the lands?

Same objection as last above.

26. Or simply to use the property in such a way as to raise money upon it?

Same objection as last above.

Ans. His object—John A. Wallace, the codefendant, was desirous of using the land to raise money in the most practicable
276 method, and the conversation after the conclusion was reached that a mortgage could not be entertained was had wholly, I may say, upon the methods of using lands for the purpose of raising the money otherwise.

27. Did these gentlemen or Mr. Leighton claim at the time that these contracts were made that they were desirous of purchasing the

lands outright or were they desiring to take them in such a shape that the repayment of this money would be secured to them?

Same objection as last above. Complainants further object on the ground that the question is leading and suggestive and calling for the conclusion of the witness.

Ans. My recollection is that they were only willing—that
277 is, the plaintiffs in this case were only willing in the purchase to give the amount of money paid Mr. Wallace at the time, and if they could be sold in a legitimate way to be satisfied with the profit expressed in the difference between the price of the sale and the price of purchase and the price at which they were to be sold in the option or contract.

28. Was there anything said about interest in the negotiations with Col. Leighton or either of the plaintiffs?

Ans. I don't think there was at all. It was not treated as a loan in the sense—usual sense—of a loan.

29. What reason was given in the conversation for agreeing to give Mr. Wallace or yourself an opportunity to pay a certain amount and take these lands within a certain time?

278 Ans. Mr. Wallace considered the land to him of much more value than expressed in either of those amounts specified—that is, I should say, specified in the contract—and desired to recover the land by purchase, repurchase, and subsequent use, and realize a thus further value. Does that entirely answer the question?

30. Yes; I guess so. When you first came to Keokuk state whether or not—or state what, if anything, was said about the extent of your interest in the transaction to Col. Leighton or either of plaintiffs. What explanation did you make of the extent of your interest in the transaction to Col. Leighton or either of plaintiffs?

Same objection as last above.

Ans. I had no interest beyond the compensation paid me,
279 or to be paid me, at the time by the codefendant, Mr. John A. Wallace.

31. Did you so state to Leighton—that you were acting for Wallace in the matter?

Same objection as last above.

Ans. I did; I suppose I did. I suppose it was understood, for I didn't ask them for any compensation, and they knew I didn't come for nothing.

32. When you first met Col. Leighton state whether or not you explained to him who it was that desired to realize money upon these lands in some shape or other.

Ans. That was done from the inception.

33. And who was the person that you named as the person who desired to realize upon the lands?

Ans. Mr. John A. Wallace, the codefendant. That was
280 done in my first and only letter. I think I wrote one letter only, setting forth the whole matter, in St. Louis, and subse-

quently the communication was by telegraph; and in the whole proceeding Mr. John A. Wallace was named and described as the party desiring to effect the transaction.

Complainants move to strike out from the answer the statement of the witness as to the contents of any letters or telegrams which passed between him and Col. Leighton, as not being the best evidence; and, further, the same are not material, relevant, or competent.

34. What, if any, conversation did you have with any of the plaintiffs other than Col. Leighton with reference to this matter?

Ans. None whatever that I recollect, unless it should be—
281 unless it was in the final and only interview, at the time of making the contract, which was then cursory only; I suppose it to be, because I had nothing to say.

35. Do you recollect about how much money the plaintiffs agreed to furnish to Mr. Wallace upon those lands described in this contract?

Ans. I think they were willing to take the lands and to advance upon the lands a dollar and a half an acre—at a dollar and a half an acre—and the number of acres, I think, was over two thousand.

36. Did either of them get to look at it before——

Ans. I don't know but that it was over three thousand—about 3,000 acres, I think.

37. Did either of them go to look at the land after you
282 came here—either of the plaintiffs?

Ans. Not that I am aware of.

38. From any conversation that you had with them or heard from either of them, did they see the land before closing up the transaction?

Ans. I can't say that they had—that is, had seen it. I may say, if it is pertinent, that that class of land was pretty well understood with the business community here, being the Des Moines river land-grant lands or railroad lands.

39. Who were the details of these negotiations most largely carried on with after you and Mr. Wallace came to Keokuk? Who of the plaintiffs?

Ans. Mr. William Leighton had the matter in hand with the plaintiffs, and made the negotiations, so far as I understand
283 them, acting in concert with John A. Wallace, the codefendant.

40. There was a deed made by Mr. Wallace direct to the parties plaintiff and Mr. Leighton while you were here, or delivered to them, was there not?

Ans. I think there—I understand there was.

41. State whether or not that deed was delivered to the parties plaintiff at the same time they gave back this contract, Ex. 1, that has been read here, to Mr. Wallace.

Ans. I believe it to be a part and parcel of the same transaction.

42. I see indorsed upon the copy, Ex. 1, an assignment as follows: "For value received, I hereby assign all my interest in the within option or contract to which this is attached to John A. Wal-

lace. Feb'y, 1875. E. R. Ford." State when you signed
284 that assignment.

Ans. It may have been preceding the execution or may have been subsequent—immediately subsequent or at the time. I can't say precisely which.

43. I will ask you for the purpose of refreshing your memory——

Ans. But I will say it was done at or about the time and was a part of the transaction.

44. I will ask you if the assignment was not executed after the execution of the paper, but before the delivery and closing up of the transaction between Mr. Wallace and the parties plaintiff and Mr. Leighton?

Ans. In my previous answer in which I have said it may have been—I think my previous answer covers the whole ground.
285 It may have been previous, may have been at the same time, or may have been subsequent, but was part and parcel of the same transaction.

45. You are clear in your recollection of the fact that in your negotiations with Mr. Leighton that you explained to him, either by letter or in conversation, that you were acting in this matter for Mr. Wallace, and had no interest in this land outside of whatever commission you might have, are you?

Objected to as incompetent, irrelevant, and immaterial, and as hearsay.

Ans. I can't use any language that I may have uttered—can't repeat any language that I may have uttered, but Mr. Leighton understood from declarations of various kinds that I had no interest whatever—no personal interest whatever—in the loan or in
286 the transaction. I mean I had no interest in the transaction, but was employed by Mr. Wallace.

Cross-examination by Mr. HAGERMAN:

46. In what business was Mr. Wallace engaged at the time that you and he came to Keokuk?

Ans. I can't answer specifically further than to say that he was in a general brokerage business, as well as a dealer in securities of various kinds and real estate.

47. Where was his place of business?

Ans. Both in St. Louis and in New York.

48. Where was his office in St. Louis?

Ans. I think he made his headquarters as much as any-
287 where—though not to my knowledge having any so-called office—he made his headquarters at Mellen & Schwart' by coming in there and transacting business at various times.

49. Did he have any regular desk in that office?

Ans. He did not.

50. Did he have any regular office in St. Louis at all?

Ans. Not to my knowledge.

51. Do you know when he acquired these lands that he conveyed by this deed to Johnstone, Davis, Connable, and Leighton?

Objected to as not a proper cross-examination and as immaterial, incompetent, and irrelevant.

Ans. Within a few weeks or months prior; immediately prior.

52. Do you know from whom he obtained them?

Objected to as incompetent, irrelevant, and immaterial, and as not proper cross-examination.

288 Ans. Except as shown in the body of the instruments, the deeds—except as shown in the body of the deeds and the representations of Mr. Wallace, as sustained by the representations of Mr. Wallace.

53. Well, from whom did he obtain these lands in question as he represented to you?

Same objections as last above mentioned.

Ans. Am I permitted to ask Mr. Wallace a question to refresh my memory?

54. I would rather you would answer from your own memory.

Ans. I can't recall the names of the different parties; they have slipped my memory, except Mr. Kilbourne. I recall him, of course, but there are two or three other parties that he bought the lands of, but I can't recall them.

289 55. Did you have anything to do with assisting him in purchasing those lands?

Ans. None whatever.

56. Do you know what it was that he bought those lands with from his representations to you?

Objected to as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Ans. From his representations, as well as—well, from his representations they were purchased with Missouri war claims—what are known as Missouri war claims.

57. Do I understand you, Doctor, as saying that Mr. Wallace did not want to sell these lands at all?

Ans. You do.

58. He did not want to sell them?

Ans. That is, he so expressed himself.

59. That was to you?

Ans. Well, he expressed himself generally.

290 60. Well, you heard him express himself?

Ans. Yes, sir.

61. That was to you?

Ans. Well, I heard him express himself to others that there was more value in them to him than he could sell them for.

62. That was here?

Ans. That was here and in St. Louis both—that there was more value in the lands than he could sell them for.

63. In the conversations that you have spoken about in your testimony, which took place at St. Louis between you and Wallace and

between you and Wallace and Mellen & Schwartz, where any of these plaintiffs or Mr. Leighton present?

Ans. None whatever.

64. When you came to Keokuk with Mr. Wallace you introduced him to Mr. Leighton, did you?

291 Ans. An introduction was not necessary, for Mr. Leighton was acquainted with Mr. Wallace.

65. After Mr. Wallace came here who conducted the negotiations with Mr. Leighton and the other purchasers of the lands?

Ans. He did.

66. You had nothing to do with it further?

Ans. I had nothing further to do with it.

67. Now, can you remember the time and place of any conversations between Mr. Wallace and Mr. Johnstone or Mr. Connable or Mr. Davis?

Ans. So far as Mr. Johnstone, Mr. Davis, Mr. Connable, and Mr. Wallace were concerned, collectively, I knew nothing about any negotiations or transactions. I was not present, I think, at a single one, either collectively or individually.

292 68. Then you never were present at any conversation between them or either of them and Mr. Wallace relating to this land transaction?

Ans. I think I was not; I think I was not.

69. The information, then, that you derived after you came up here as to the progress of these negotiations you derived from Mr. Wallace?

Ans. Mr. Wallace and Mr. Leighton, at conversations occurring at Mr. Leighton's office, at which I was sometimes present.

70. Did you pay any particular attention as to those conversations?

Ans. I suppose I did, as I am in the habit of doing so.

71. But those were the only conversations that you ever heard between Wallace and any of the parties relating to these land transactions here in Keokuk?

293 Ans. So far as I can recollect, I don't think I was present at a single interview or participated in any negotiations or conversation.

72. Were you present at the final closing of the trade?

Ans. Not at the closing, unless you call the execution of the papers the closing.

73. The execution and delivery of the papers—were you present at that time?

Ans. I was present at that time.

74. Was this option handed to you at that time?

Ans. It was.

75. It was?

Ans. It was handed to me for my assigning.

76. Now, did you assign that contract in the presence of Mr. Connable or Mr. Johnstone or Mr. Davis or Mr. Leighton?

Ans. I can't speak positively as to that, because, as I have before

stated, I don't recollect whether it was previous, at the same
294 time, or subsequent.

77. Do you know that they ever had any information that you had assigned that contract until they ascertained that the contract had been recorded with that assignment upon it?

Ans. I can't say as to that.

78. You have no information upon that?

Ans. I have no information upon that subject; I can't state from information. I can state what my understanding was, if that is desired.

79. Only from some conversations with these parties?

Ans. Then I can say that I have no recollection of any conversation upon that subject with them as to their knowledge. I have no recollection of it.

80. The two contracts which finally passed between the
295 parties was the Wallace deed, which was delivered to Leighton, Connable, Johnstone, and Davis, and this option contract that was delivered to you.

Ans. Were they not true, you say?

81. Were they not the two contracts that passed between the parties?

Ans. The contract of conveyance and this contract?

82. Yes, sir.

Ans. So far as I know. I don't know of anything more.

83. So far as you know, at the time those were the only contracts between the parties, weren't they?

Ans. No; I think not. I think there was another contract, upon refreshing my memory. There was a deed or—yes, a deed. One of the deeds was imperfect, or else there was something wrong. Either some taxes had to be looked up or there was some imperfec-
296 tions in the deed, and I disremember particularly what imperfection may have existed, and it required time for correction, and there was a portion of the payment retained until that should be corrected, and a contract or note or something of the kind, whatever it was, was executed, so as to cover that part of the contract.

84. That contract just modified the amount of the purchase-money of the deed?

Ans. It made up the aggregate of the amount that was to be given for the entire amount of lands described in the proceedings. What I mean is in the plaintiffs' petition.

85. I will ask you, then, if these three contracts—the deed of conveyance from Wallace to these parties, the option contract to you, and this other paper to which you have referred—were all
297 the contracts between the parties at the time that the contracts were finally delivered.

Ans. So far as I know or can recollect.

86. And you know of no other contract between them at that time than what was expressed in those writings?

Ans. I know of none.

87. And, so far as you know, those writings correctly express the contracts between the parties at that time?

Ans. So far as I know, I believe that they do.

88. The contracts as written correctly express the understand-*stand*ing and agreements between the parties at that time?

Ans. I believe they do.

Complainants move to strike out the question and answer as incompetent, irrelevant, and immaterial.

298 89. And you know of no oral contract beside these written contracts in any way modifying them?

Ans. I know of none.

Complainants move to strike out the question — answer as incompetent, irrelevant, and immaterial and being the conclusion of the witness.

90. Now, I will ask you if you and Mr. Wallace within the 60 days that were given by this contract attempted to make a sale of these lands?

Ans. For myself I gave no further attention to the matter, having no interest whatever in it.

91. Did you give any attention to it for Mr. Wallace?

Ans. None whatever, and what Mr. Wallace may have done I do not know.

299 92. I will ask you, Doctor, if you knew of a Mr. Crafton having some Iowa lands which he obtained about the same time that Mr. Wallace obtained these lands in controversy and for the same consideration.

Ans. I did. I can't specify as to the consideration, except that they were paid for in Missouri war claims. As Mr. Grafton—well, I will put my answer more consecutively.

93. Question reread at request of witness.

Ans. I knew Mr. Crafton when he was adjutant general of the State of Missouri, and he had a list of lands purchased with these claims known as Missouri war claims, as represented.

94. Do you know that Mr. Crafton sold those Iowa lands or a portion of them to these plaintiffs shortly after Mr. Wallace had made this sale of them?

300 Ans. I negotiated a similar transaction for Mr. Crafton with Mr. Leighton.

Complainants move to strike out the question and answer as incompetent, irrelevant, and immaterial.

95. Was there any contract of repurchase in that transaction between them and Mr. Crafton?

Same objection as last above.

Ans. There was.

96. Was there an option contract similar to the one in controversy?

Same objection as last above.

Ans. Not exactly similar, because it ran to Mr. Crafton individually. I think it did.

97. For how long a time?

Ans. I can't now recollect, but about 60 or 90 days.

98. Did Mr. Crafton ever avail himself of that option and repurchase the land within the time?

Objected to as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Ans. He did not.

301 99. Were those lands sold at the same price per acre as the Wallace lands?

Same objection as last above.

Ans. I can't recollect exactly as to that item. I should qualify the previous answer by saying that Gen. Crafton came here before the expiration of his option and concluded an arrangement for the transfer of the lands by receiving a further amount of money and surrendering the option. I came with *with* him at the time.

100. That was before the expiration of the time?

Ans. Before the expiration of the time. I came with him.

101. Doctor, I think, not in your answers, but in some of the questions put to you by opposing counsel, in speaking of this transaction between Wallace and the plaintiffs and Mr. Leighton, you

302 may have used the word loan. I want to know from you explicitly whether there was any loan made, unless it be expressed in this deed of conveyance and in this contract, back?

Ans. The deed and the option contract express the whole transaction.

102. And you don't mean to say that it was a loan? You don't mean to say whether it was a loan or what it was?

Ans. I didn't so understand it as a loan.

103. And in your negotiations you didn't understand it in that light, as a loan?

Ans. I did not. From the beginning, in St. Louis, I think it was my own suggestion as to this option of repurchase, knowing that a mortgage or deed of trust would not be accepted for a short

303 loan. Knowing that, I gave it as a suggestion or opinion that no short loan could be effected. As no loan was contemplated, the subject-matter of a loan was left out of the question altogether.

104. And what you suggested to Mr. Wallace was that he make a sale and take back a contract of repurchase within a stipulated time and for a stipulated price?

Ans. That was the only method that I thought—this is the way that I commenced the conversation in St. Louis on that question, in this instances and in various instances in which I was approached in reference to Iowa lands, that a sale might be effected, but that a short loan could not be made upon unimproved lands; hence I am quite positive that the subject of loans was not enter-

304 tained, was not discussed, was not entertained at all.

105. And the question of interest was never discussed between Mr. Leighton and Mr. Wallace or the complainants and Mr. Wallace, so far as you know?

Ans. Now at all; I am confident not at all. Whatever compensation the purchasers would consider in the matter would be in the nature of a profit on the land in selling. That idea I conveyed and entertained it myself. I undertook to convey that and entertained the same idea or opinion myself.

Redirect examination by Mr. COLLIER:

106. In the negotiations with Mr. Leighton I understood you, in answer to Mr. Hagerman, to say that Mr. Wallace claimed
305 that the lands were of more value to him than the amount of money he desired to raise upon them. Is that correct?

Ans. He continually so expressed himself.

107. And in Mr. Wallace's conversation with Mr. Leighton state whether or not he was proposing by whatever contract the- drew up to use these lands as security for whatever money was advanced to him or them, and whether or not these papers, the deed and the conveyance back, was not the method that the partie- devised for securing the repayment of this money back to the plaintiffs and Mr. Leighton?

Objected to as calling for a conclusion and as leading and suggestive; and, further, because the *the* witness has stated that
306 the contracts expressed clearly what was intended between the parties.

Ans. Not wholly. It was not wholly expressed in that language. The price and money that they paid was an amount that was satisfactory to them to hold the lands should they not be repurchased, if I apprehend your meaning. They were willing to sell the lands at that advance within the time specified, 60 days, as it was then termed.

108. In your direct examination I understood you to say that there was talk between Mr. Wallace and yourself and Mr. Leighton about a mortgage and reasons given why a mortgage would *would* not be satisfactory to him; was that correct?

Ans. It was.

109. And that his objection to the mortgage was the delay in foreclosure?

Ans. It was a reiteration, I may say, of my customary lan-
307 guage, and I presume the language that I had in St. Louis in the beginning with Mr. Wallace.

110. That is, that a mortgage or paper in the nature of a deed of trust would require to be foreclosed?

Ans. Would require to be foreclosed.

111. Which is getting the money for a short time?

Ans. Would not be entertained.

112. Would not be entertained?

Ans. Yes, sir.

113. When Mr. Wallace first had his conversation with you his desire, expressed at that time, was simply to secure a loan upon the land, was it not?

Objected to as incompetent, irrelevant, and immaterial, and as hearsay.

Ans. It was his desire.

114. When he came to Keokuk he had abstracts of title
308 to the land, showing title in him, which he exhibited to Mr. Leighton, had he not?

Ans. I think he did; I am confident he did, because I examined them myself.

115. You had nothing which showed yourself to have any interest in them?

Ans. Nothing whatever.

116. In the conversation with Mr. Leighton did you claim to have any interest in the lands?

Ans. None whatever, but to the contrary.

117. Did you claim any interest in that — was raised upon them beyond your commission?

Ans. None whatever.

(Witness excused.)

Adjourned until such time as shall hereafter be agreed upon.

309 UNITED STATES CIRCUIT COURT CHAMBERS,
KEOKUK, IOWA, *July* 22, '82.

By consent the taking of these depositions is resumed pursuant to the foregoing adjournment and in accordance with the stipulations first herein referred to.

WILLIAM BALLINGER, called on the part of the respondent, John A. Wallace, being by me first duly sworn, deposes and says:

Direct examination by Mr. CRAIG:

118. What is your name, age, and place of residence?

Ans. William Ballinger; age, 38; reside at Keokuk, Iowa.

119. Are you acquainted with the parties to this suit?

Ans. Yes, sir; I believe that I know them all.

120. Were you acquainted with them in February, 1875?

Ans. Yes, sir.

310 121. In what business are you now engaged, and in what business were you engaged at the date last spoken of?

Ans. I was attorney-at-law at both dates.

122. Here in the city of Keokuk?

Ans. Yes, sir.

123. Did you see and have any business with Mr. Wallace, the defendant in this suit, at that time—at or about that time?

Ans. At or about what time, Mr. Craig?

124. February, 1875.

Ans. Yes, sir; I saw Mr. Wallace and had some business transactions with him.

Complainants move to strike out the question and answer as incompetent, irrelevant, and immaterial.

125. Where was he living at that time, and with whom, if any person, did he come to this city?

Ans. I think he was living in St. Louis at that time, and I
311 don't know with whom he came. My impression is that he came with Ford, but I don't know that. They were here together.

126. Do you know on what business? If so, state.

Ans. Yes; I know from them. I know what business they said they came on—Mr. Ford and Wallace.

127. Well, what business was it?

Objected to as incompetent, irrelevant, and immaterial and as hearsay.

Ans. I learned from them that they came here to make a loan for Mr. Wallace—to obtain a loan. The particulars I learned from Col. Leighton. I did not know at that time who the other parties were.

128. Well, state, as far as you know, what was done.

Ans. I don't know that I know anything only as they told it to me.

312 129. State whether or not you saw any papers between the parties to this suit or not.

Ans. Yes, sir; I think I saw—shall I name the papers that I saw?

130. Yes, sir.

Ans. I think I saw the deed and I think I saw the contract or option, whatever it may be termed, by the plaintiffs to Mr. Ford.

131. What, if anything, had you to do with the deed that you speak of?

Ans. I don't know that I had anything. Do you mean its execution?

132. What, if anything, had you to do with the deed that was executed between the parties at the time?

Ans. I don't know, any more than it may have been shown to me. You mean did I take the acknowledgement or write the deed?

133. Yes; I can't ask you a leading question.

313 Ans. I don't know that I did either. I may have taken the acknowledgement. If I could see the deed I could tell. I know I didn't take Mrs. Wallace's acknowledgement, because she was not there.

134. Did you see the deed?

Ans. I think I did.

135. Who were the parties to the deed?

Ans. If I remember right, John A. Wallace and wife were the grantors, and the plaintiffs in this suit were the grantees—if I re-

member. The plaintiffs in this suit and Col. Leighton were the grantees, I think.

136. What did that deed convey?

Ans. It conveyed a lot of lands.

137. Do you know where the lands lay?

Ans. I think they lay in Clay county and some other counties in this State; up in the northern portion of the State some-
314 where, chiefly in Clay county, I think.

138. Now, what paper, if any, was executed in connection with that deed or at the same time?

Ans. Well, this bond or this contract or option which I spoke of before was executed at the same time.

139. I hand you a copy of a contract executed between the parties to this suit, certified by the recorder of Clay county, and filed as a part of Mr. Ford's deposition in this case as Ex. 1. Examine that paper and state if this is the contract or copy of the contract that you speak of.

Ans. I take it to be so; yes, sir.

140. At what time was that executed with reference to the deed that you spoke of?

Ans. My recollection is that it was executed at the same time—same date.

315 141. There are certain lands spoken of in that contract, described in that contract. State whether or not the- were the lands contained in the deed.

Ans. My recollection is that they were the same lands.

142. The deed of Wallace to the parties that you have named?

Ans. Yes, sir.

143. There is an assignment upon said contract spoken of. When was that assignment made with reference to the execution of the paper itself?

Ans. My recollection is that it was made either at the time or before the transaction was completed.

144. The date of said assignment is stated as of February, 1875, without giving the day. Do you know how that happened that the day of the month was not put in the date of the assignment?

Ans. Yes, sir; I think I do. I think that the date was not
316 put in, because the transaction was not yet completed, and that Mr. Wallace wanted this paper assigned to him before the transaction was completed, and didn't wish it in Mr. Ford's hands, and wanted to make sure of it, and so had it indorsed in advance.

145. Did you take Mr. Leighton's acknowledgement to that paper—that contract?

Ans. I couldn't say from recollection about it. I presume I did. I see my—you haven't got that original contract?

146. That is a certified copy.

Ans. I suppose I took all of their acknowledgements, but I have no very distinct recollection about it.

147. State whether you know whether Mr. Leighton knew of the

assignment by Ford to Mr. Wallace, as appears upon that contract; and, if so, how you know.

317 Objected to as incompetent, irrelevant, and immaterial, Mr. Leighton being dead.

Ans. Well, in respect to a part of that matter I have a pretty decided recollection, and as to another part of it I have not. At one time I had just a moment's conversation with Mr. Leighton in which the matter of the assignment, before it went into Wallace's hands or before Wallace completed the transaction, was mentioned, and Leighton laughed and said, "And so he got the paper signed in advance." Now, that I am quite positive occurred; but whether it occurred after these things—after this transaction was completed or before—

318 I can't say positively about that; but my impression is that it was at the time that I took his acknowledgement. That is my impression; but I couldn't say positively about it.

148. What is your best recollection upon that subject?

—. Well, that is my best recollection. I am mixed about it as to when it did occur.

149. Was that paper present when Mr. Leighton made that statement?

Ans. That I couldn't say—that that paper was present.

150. Well, did he see that paper at the time that he made that remark?

Ans. Well, that is the part about which I am not sure. I don't know. My memory is that he did; that I had that paper at the time that that remark was made; but I won't say so. That is my best recollection of it.

319 151. State whether or not Mr. Wallace delivered the deed for the lands to the plaintiffs before or after he got that contract with the assignment—before the contract with the assignment on it was delivered to him.

Ans. Well, Mr. Wallace consulted with me something about these matters, and he was very averse, I remember, to having the deed pass out of his hands until he got this contract into his own possession; and, as I understood it both from Wallace and Mr. Ford, this contract was made to Ford with the intent that it should be assigned to Wallace, and my recollection is that Mr. Wallace wouldn't part with the deed until he got this assignment from Ford.

By Mr. HAGERMAN:

152. And that you got from conversations with Mr. Wallace and Mr. Ford?

320 Ans. Yes, sir; and whether the paper itself was present or not I am not sure about, but I know that it was the distinct understanding between them, as they talked it, that Wallace wouldn't complete the transaction until he got this assignment. This assignment was understood between them as being for Wallace and not for Ford, and that is how the date happened to be omitted there.

Complainants move to strike out the answer of the witness, be-

cause it details conversations between himself and Messrs. Wallace and Ford, which cannot bind or affect these plaintiffs in any way.

153. What is your best recollection as to which was delivered first, the deed or the contract?

321 —. Well, I think Mr. Wallace had this paper in his hands before the deed was delivered, or that this assignment was made before the transaction was completed and the deed was delivered.

154. Did Wallace receive any money on this deed that he made in connection with this paper?

Ans. I suppose he did. I collected for him after he went away the balance that was coming to him upon the transaction, and I think he received about somewhere between three and four thousand dollars prior to that.

155. At what time did he receive that, with reference to the execution of these papers? State whether or not it was at the time that the deed and the contract were executed that he received that first money.

322 Ans. Well, I don't think I was present when that money was paid. Personally I don't know about it, but I knew generally of the transaction, and my understanding was that at the execution of the papers he received between three and four thousand dollars and the contract or additional note for some ten or fifteen hundred dollars more. I don't recollect precisely what the amount of that additional contract was. It was left with me, and I collected it afterwards.

156. Well, now, when was that additional note or contract left with you with reference to the execution and delivery of this deed and contract spoken of by you?

Ans. Well, I won't say more than it was close about the same time. I think as soon as Wallace got his money he left.

323 That was what he was waiting for, I remember, and as soon as he got his money he left; and that paper was left in my hands when he went away.

157. Was it the same day?

Ans. I think so, but I don't know. It must have been the same day he left or before, for I think he left immediately as soon as he got the money.

158. In what capacity did you act in this matter—this transaction?

Ans. Well, I scarcely know.

159. Well, state whether or not you were acting as attorney for Mr. Wallace.

Ans. Well, I couldn't even say that the relation of attorney and client subsisted between us, but I know he talked with me about it, and I answered his questions whatever he asked, and I think the transaction that he and Ford had was pretty much upon their

324 own hook, but he submitted something to me as to what all these transactions amounted to, and advised with me somewhat about that, and I gave him my opinion about that.

160. You knew the contents of this deed and contract, did you, at the time?

Ans. Yes, sir.

160½. Did you examine them and tell him what they amounted to?

Objected to as incompetent, irrelevant, and immaterial.

Ans. What the papers amounted to?

161. Yes, and the facts connected with the transaction.

Same objection as last above.

Ans. Yes; upon his and Ford's statement to me of the outside transaction, I told him what I thought the papers amounted to and the outside facts as he gave them to me.

325 162. What did he want to know of you?

Objected to as calling for a conversation at which these complainants were not present and as hearsay.

Ans. He wanted to know whether the contract and the deed and the outside facts, as they named them to me, amounted to an absolute or a conditional sale of the property, or whether it was a mortgage.

163. And what did you tell him?

Same objection as last above.

Ans. I told him that upon what they said about it—that is, Ford and Wallace—it amounted to a mortgage.

164. State whether or not you knew at that time whether these papers—the two papers, the deed and the contract—were executed at substantially the same time.

Ans. I understood so; yes, sir.

165. Did you also understand that he owned the land

326 that was conveyed in the deed?

Same objection as last above.

Ans. Yes, sir.

Cross-examination by Mr. HAGERMAN:

166. Did I understand that you were present at the time that Mr. Wallace delivered his deed to the plaintiffs and Mr. Leighton?

Ans. No, sir; I don't think I was. I don't think I was present when the deed was delivered.

167. Were you present when the option paper was delivered?

Ans. That is, delivered to Ford?

168. Delivered from the plaintiffs and Col. Leighton?

Ans. To Ford?

169. Yes; to Ford.

Ans. I don't think so.

170. Did you see that option contract delivered from the plaintiffs to Wallace?

327 Ans. No, sir; I don't. It ain't my understanding that it ever was so delivered.

171. What you mean to say is that you were present when Ford delivered it to Wallace?

Ans. Yes, sir.

172. Were the plaintiffs present at that time?

Ans. No, sir; none of them.

173. Had the paper been signed at that time by the plaintiffs and Col. Leighton?

Ans. I am not right sure about that, but my impression is that the paper was signed by Ford in advance of his acknowledgement—of my taking the acknowledgement. I think Ford brought the paper signed by all the parties, and, as the transaction was not yet completed, that he made the assignment to Wallace without date.

174. Then at the time that Ford made the assignment the
328 option contract had been signed by these parties, and the paper was in Ford's possession?

Ans. I think so.

175. But you think that the parties acknowledged it afterwards?

Ans. I think so; that is my best recollection, but I am not positive about it one way or the other.

176. Do you remember where it was that you took the acknowledgment?

Ans. No, sir; I do not.

177. Do you remember whether you suggested the necessity of taking an acknowledgement?

Ans. No; I don't remember that. I think the acknowledgement was written when it came to me, but I might have written it myself. I don't know. I can't tell, unless I should see the original instrument.

329 178–9. You don't remember the place where you took the acknowledgement?

Ans. Mr. Hagerman, I wouldn't swear positively that I took it at all, except—in fact, I don't swear positively that I took it at all without seeing the paper, but I suppose I took it. That is as far as I would go. I remember the fact that Wallace wouldn't and didn't want the transaction completed until he got this paper.

180. That is to say, he didn't want to trust Ford with the paper?

Ans. No, sir.

181. That is the material fact that you remember?

Ans. Yes, sir.

182. That he wanted to get possession of it himself and not leave it to Ford?

Ans. Yes, sir; that was it.

183. And the understanding that Ford was simply a nom-
330 inal party to the paper, and that Ford's interest was nominal and was transferred to Wallace, was given to you by Mr. Wallace?

Ans. Yes, sir.

184. And not by the plaintiffs or Mr. Leighton?

Ans. No, sir.

185. You never had any conversation with the plaintiffs as to what the contract between Wallace and Ford and them was, did you?

Ans. I think not a word.

166. You say that you told Ford and Wallace that this was a mortgage. I will ask you if that statement was not made to them in consultatien with them when none of the parties plaintiffs or Mr. Leighton were present?

Ans. Yes, sir; there was none of them present in any of those.

187. And you say that that statement was made upon the
331 papers and certain outside facts which were stated to you?

Ans. Both?

188. Yes, sir.

Ans. That is, that that opinion was given?

189. Yes, sir.

Ans. Yes, sir.

190. Now, if it had been stated *the* you that the deed and the option contract expressed the whole contract between the parties, what advice would you have given?

Ans. I would have told them that it was not a mortgage; that if he didn't pay the money within the time stipulated that the land was gone.

191. Were you acting as the attorney of Mr. Wallace at the time the deed was made and the option contract?

Ans. If I was acting as attorney for anybody I was acting
332 for Mr. Wallace. I had been Mr. Wallace's attorney, and in the capacity of an attorney I understood that he wanted my opinion upon these questions and I gave it.

192. Did he pay you a fee at the time, or do you remember?

Ans. I don't know whether he did or not. If I charged him a fee I have no doubt he paid it.

193. Well, did you make any charge against him of a fee?

Ans. I couldn't say about that. Afterwards, after I made this collection of Col. Leighton & Co., why, I charged Mr. Wallace a fee, and I think it was just a lumped sum, and whether anything was intended to be included on account of this matter or not I don't know.

194. You considered yourself as acting as attorney for Mr. Wallace at that time?

Ans. Yes, sir; if I was acting for anybody I was acting for him.

333 195. Well, are you his attorney at present?

Ans. No; I have no business of his in the worl- now. Do you mean whether he——

196. No; I mean are you his attorney at present in this suit?

Ans. No, sir.

197. Are you his adviser or counsel?

Ans. No, sir; not in this suit.

198. You drew the answer?

Ans. Yes, sir; I drew the answer and he paid me for that, and that is the end of my connection with it.

199. And that is the end of your connection with it?

Ans. Yes, sir; I drew the answer, but I don't think I signed the answer as attorney. I am quite sure that I did not.

200. Your connection, then, with the case as counsel ended when

you were paid the fee for writing the answer; when you drew the answer and were paid the fee?

334 Ans. Yes, sir; if I had any connection it ended then. I don't regard that I had any connection then; but I drew the answer because I knew some of the facts myself and could better assist him in drawing the answer than anybody else. I suppose he thought I charged him a fee for drawing the answer, and he paid it.

201. Then I am to understand, Mr. Ballinger, from your testimony that all you knew about the original transaction, about the making of the deed and of this option contract, was derived through either Ford or Wallace and not from the plaintiffs or Mr. Leighton?

Ans. I don't know exactly how to sum up my testimony to say what is the result of it or what exactly you understand from it.

335 202. Well, did you at any time prior to the execution and delivery of these papers have any conversation with or hear any conversation with the plaintiffs or Mr. Leighton in respect to the same?

Ans. Not a thing in the world, unless—and I wouldn't be sure about that—unless the remark of Col. Leighton's, that "so he required an assignment in advance from Ford;" and I won't say positively when that occurred, but my impression rather was that it was when I took the acknowledgement.

203. With that exception, you neither had any conversation nor heard any with the plaintiffs prior to the execution and delivery of the papers?

Ans. No, sir.

336 204. I understand that you were not present at the time of the delivery of the deed to the plaintiffs and Leighton and the delivery by them of the option contract?

Ans. I don't think I was present at either time.

Redirect examination by Mr. CRAIG:

205. What is your best recollection as to the time when Mr. Leighton made this remark about Wallace's getting the assignment from Ford of the contract?

Ans. My best recollection is that it was at the time that his acknowledgement was taken.

206. You stated in answer to a question of Mr. Hagerman that your recollection is that that contract was brought to you signed, but not acknowledged. You are satisfied now that you took the acknowledgement of the parties?

337 Ans. I have been satisfied of that all the time, but I have no independent recollection that I did.

207. What did you do with the paper when you took the acknowledgement?

Ans. Well, I have no doubt that I took it and gave it to Wallace, but I don't know.

208. I understood you to say that you were present at a time when Mr. Ford gave Mr. Wallace that contract with the assignment on it.

Ans. I think I was; yes, sir.

209. Do you know whether Mr. Wallace had delivered the deed or not at that time to Mr. Ford or any one else?

Ans. Personally I don't know. I know only from my talking with Wallace that he wanted that paper in his hands before he completed the transaction.

210. Well, do you recollect whether or not the deed was
338 there at the time that Ford gave Wallace this contract with the assignment on it?

Ans. No, sir; I don't remember whether it was or not.

211. Do you recollect whether that was before or after the acknowledgement of the deed?

Ans. Well, my impression is that it was before; oh, the acknowledgement of the deed? I don't know when the acknowledgement of the deed was taken. I thought you meant the acknowledgement of the contract. I don't think I took the acknowledgement of the deed, but I couldn't say about that.

212. You stated in answer to Mr. Hagerman's question that you gave to Mr. Wallace the opinion that this transaction constituted a mortgage, and that you gave that upon the two papers
339 themselves and the outside facts which they stated to you. What were those outside facts upon which you based that opinion?

Objected to as incompetent, irrelevant, and immaterial and as hearsay.

Ans. Well, they were that Mr. Wallace had come from St. Louis with Mr. Ford to obtain a loan upon these lands at Keokuk; that the parties whom they sought for a loan didn't wish to make a loan simply upon a mortgage, but that they were willing to in case they could obtain a deed and give a contract back for repurchase, and that if the matter were fixed in that way they would lend the money upon the lands, but they wouldn't upon an ordinary
340 process of mortgage.

214. Was anything said about the amount of money?

Ans. The amount of money that they were to give or that was to be paid back?

215. That he was to get.

Same objection as last above.

Ans. No; I don't know that there was anything said about the amount of money that Wallace was to get. I didn't know at that time what amount he was to get.

216. Well, was there anything said about interest; and, if so, what?

Same objection as last above.

Ans. Well, Ford—Ford said, told Wallace that they would not—that they were not willing to lend him the money and obtain simply the ordinary rate of interest; that they wanted to obtain more, and that in case they made such a loan they preferred
341 this way of doing it, so as to have a larger return than simply ten per cent. in case the land was redeemed or bought back.

217. I understood you to say that Wallace got part of the money before he left?

Ans. Yes, sir.

218. State how much, as near as you can tell.

Ans. Well, my understanding was somewhere about $3,000; somewhere between that and $4,000.

Recross-examination by Mr. HAGERMAN:

219. Why wasn't all the money paid?

Ans. There was some defect, I think, about the title to the land or some portion of it that the plaintiffs wanted corrected before they paid all of it, and they were not willing to pay it all until that defect—I don't remember what it was. It seems to me it was
342 the acknowledgement of one of the deeds of Mr. Wallace's grantors. It seems to me—but I ain't sure; but it was some defect about the title in some way; but they were willing to let the money be on it until this defect was corrected.

220. And as soon as that defect was corrected they paid the balance of the money?

Ans. They did; yes, sir.

221. Now you speak, Mr. Ballinger, about giving your opinion on the statement that was made to you by Mr. Wallace and Mr. Ford. I will ask you if you haven't, since this controversy arose, heard the statement made to you by the plaintiffs in this case, and if upon that statement you- opinion is not that this is not a mortgage?

343 Objected to as incompetent, irrelevant, and immaterial and as not being part of the *res gestæ* of the transaction.

Ans. Yes, sir; I had a conversation with Judge Johnstone, one of the plaintiffs, and upon his statement of the case I was very clearly of the opinion that it was not a mortgage.

(By Mr. CRAIG:)

222. When was that that you gave that opinion to Judge Johnstone?

Ans. I don't remember; since Mr. Wallace has been here.

223. Did Judge Johnstone seek to retain you at that time as counsel in the case?

Ans. No, sir.

224. Or at any time?

Ans. No; I don't understand that he did.

225. Or any of the plaintiffs at any time since seek to retain you as counsel in the case?

Ans. No, sir; I don't understand that any of them did.

(Witness excused.)

Adjourned until Monday morning at 8 o'clock.

344 UNITED STATES CIRCUIT COURT CHAMBERS,
KEOKUK, IOWA, *July* 24, '82.

The taking of these depositions is resumed, pursuant to the foregoing adjournment.

JOHN A. WALLACE, one of respondents, called on his own behalf, being by me first duly sworn, testifies as follows:

Direct examination by Mr. CRAIG:

226. What is your name, age, and place of residence?
Ans. John A. Wallace; St. Louis, St. Louis county, Missouri.
227. You are of lawful age, are you?
Ans. Yes, sir; I am 42.
228. Are you one of the defendants to this suit?
Ans. Yes, sir.
229. State whether or not in the beginning of the year 1875 you were the owner of the lands in controversy in this suit.
345 Ans. I was.
230. What did you do with said lands in 1875? And if you conveyed them to the plaintiffs in this case state the circumstances under which you did so.
Ans. Well, I shall commence at the beginning of the transactions?
231. Yes, sir; just state the circumstances; that is what I want.
Ans. Some time in the forepart of February, 1875, on my return from New York, I applied to my agent or agents, John S. Mellen & Co.—or it was Mellen & Schwartz—for a loan upon some of my Iowa lands. I applied to them for a loan of $5,000, and they said they thought they could get it for me, and I went in again—I think it was the next day—and they told me that Mr. Ford could get the loan for me in Keokuk.

346 Complainants move to strike out those portions of the above answer relating to conversations between Mellen & Co. and the witness as hearsay.

And I saw Mr. Ford there and he told me that he thought there was no doubt that he could get me the loan here through Mr. Leighton or from Mr. Leighton, and wanted to know what commission I would pay him, and we agreed upon that, whatever it was; and he wrote to Mr. Leighton right away to know if it could be had.

Complainants make same motion as last above to all conversations between Ford and witness.

And in a few days he got a reply from Mr. Leighton stating that he could furnish the money.

347 Complainants move to strike out the last part of witness' answer as stating the contents of a writing and as hearsay.

And then I wanted the money quick and there was some telegraphic despatches between Mr. Ford and Mr. Leighton about that to know if it could be had at once, and replies had by Mr. Ford from

Mr. Leighton, and then we started to Keokuk, Mr. Ford and myself. When we arrived here Mr. Leighton called on me at the Patterson House, with Mr. Ford, and the subject-matter was immediate- introduced, and Mr. Ford, I think, allowed Mr. Leighton and myself to talk over the matter alone, and Mr. Leighton and I had a number of interviews at the Patterson House, talking over preliminaries
348 about the loan and the manner of affecting and perfecting it; and Mr. Leighton said that the time being a short loan they would want more than regular interest.

Complainants here object to all testimony given or to be given by this witness relative to conversations with Mr. Leighton, unless some of the complainants were present, upon the ground that Mr. Leighton is dead and such testimony is incompetent.

And all the arrangements were made with Mr. Leighton about the loan and these lands, 3,200 acres or thereabouts, the amount being what I had asked for, $5,000; and after he had agreed to let me have the money for 60 days—our arrangement had been talked over at frequent intervals—the matter was talked over
349 about the manner of completing the loan or of perfecting it by deed or mortgage or deed of trust, and the- Mr. Leighton said that his associates would require a deed, and would give an option back for the repurchase of the lands in 60 days at the advance agreed upon, being interest, and being more than the legal interest. He said, to avoid the little technicalities of usury, we had better have the assignment or the contract to reconvey made in the name of my agent, Mr. Ford, and I told him that I would agree to anything to get the money quickly; that would make them secure, and at the same time make me secure, as I would not sell the lands at any such price, for I did think that I would have the
350 money in 60 days without selling the land at all, and the loan in that manner, as was afterwards carried out by the complainants and Mr. Leighton, was agreed upon after I had gone to my attorney, Mr. Ballinger, and inquired of him if such a conveyance and contract for reconveyance would make me equally secure in not losing my lands without a legal process of law or foreclosure, and, Mr. Ballinger giving me as his opinion that such a contract would be a mortgage and would have to be foreclosed, I agreed to accept the loan in that manner as carried out by these papers or the papers that were signed by me and Ford and Mr. Leighton and the plaintiffs.

351 Complainants here object to any statements given by the witness or to be given as to any conversations between himself and Mr. Ballinger, unless complainants were present, as hearsay and not competent.

Then when that arrangement was accepted between Mr. Leighton and myself, he said then that we should take the papers—my deeds and whatever evidences of title I had or memoranda—I don't remember what they were, whether I had an abstract or not—and also the power of attorney from my wife. Mr. Leighton wanted, of

course, to have them examined, I think, by Major Collins, and whether by anybody else or not I don't know. Whether he took the papers and showed them to the plaintiffs in this case at that
352 time or not I don't remember. At any rate, they were submitted for examination to Mr. Collins, I know, as to the completeness of my title, &c., and there was found to be some imperfection in the power of attorney from my wife or the acknowledgement of the power of attorney from my wife to me. I disremember what that imperfection was, or whether we had to have a new power of attorney or the old one corrected I don't remember, but I think I either wrote and sent a power of attorney to George W. M'Cleary in St. Louis or I telegraphed him to make a full power of attorney and also the style or form of acknowledgement, but whether I did that by sending a letter—I know I was in a great hurry, and
353 whether I—whether the power of attorney was made out here—if it was made out here—I think it was done by Major Collins, but I don't know in regard to that whether it was made out here and sent to him or whether I telegraphed to him or wrote to him instructions how to make it out according to the instructions here or requirements here. Then there was found to be an imperfection, according to the statu-e or laws of the State of Iowa, in the deed from David W. Kilbourne to myself for a portion of these lands, which imperfection, I think, was nothing more than the form of acknowledgement. The form should have—well, the form of acknowledgement—that is, Mr. Kilbourne's acknowledgement—to me required the word "identical" in the place of some other word that was used in the acknowledgement. I think that was the
354 only thing that it required to make it according to the laws of Iowa, and that deed was sent off either for correction or for a new deed, and I disremember which, to Mr. Kilbourne in New York.

232. Well, now, go on and state what further occurred—what was done and said.

Ans. Well, the waiting for the power of attorney and the deed required my staying here a number of days after that. After that was done I remained here and consulted my attorney about the matter. I think that I met some of the gentlemen who are plaintiffs in this case, relative, perhaps, to getting a portion of the money as soon as those papers arrived, if it couldn't be closed up then entirely—that is, if all the money couldn't be paid until they
355 sent to Clay county, or some other little preliminaries. I don't know how many times I met them altogether or separately, but I met them, and finally we came to an agreement. Whether the Kilbourne deed had returned corrected or not, my power of attorney had returned from St. Louis, or the Kilbourne deed might have returned, before we closed the matter substantially as Mr. Leighton and I had agreed before going to submit the papers in the first place. The details of the matters with the closing of the matter were all the carrying out of the arrangement that Mr. Leighton and I had made, and for some time in our negotiations I didn't know who the parties were or would be. He says,

"My associates in the bank"—until after the matter had
356 been arranged and the papers submitted for the purpose of carrying out the agreement which we had already made, and whether the delay in paying all of the balance of the money at the time was caused by the Kilbourne deed not returning—I think, though, that that had returned and there was something to send up to Clay county for; and I being in a hurry to get off for St. Louis and New York, we agreed upon an amount that I should receive, and the balance of the amount that I was to receive was to be paid to Mr. Ballinger for me, as he had attended, and I consulted with him about the matter after the first. After the arrangement was made, and I consulted at all, I consulted him then
357 about the matter all the way through, and left the collection of the balance of the money and the assisting as to the revision with the parties as to the corrections or perfecting of whatever ought to be perfected of the title, for the balance of the money to be paid, whether that was in little taxes or discrepancies.

233. When you met Mr. Leighton after coming here with Mr. Ford what did you tell him you wanted?

Ans. I told him I wanted a loan of $5,000.

Complainants move to strike out the question and answer as immaterial, irrelevant, and incompetent.

234. For how long?

Objected to as incompetent, irrelevant, and immaterial.

Ans. For 60 days.

235. What reply did he make?

Ans. Well, he told me that it could be had; that it was his
358 associates in the bank who could furnish the money.

Complainants move to strike out the question and answer as incompetent, irrelevant, and immaterial.

With his associates—through, by, or with them.

236. What, if anything, had passed between him and you or you and any of the plaintiffs here about your selling the land to him or them?

Ans. The matter of the selling of the land was absolute—selling it, I mean—and parting with the title was never discussed between Mr. Leighton and myself before the closing of this transaction, because I told him that I wouldn't sell the land for any such price as I could get on so short a notice, because the lands were very valuable.

359 237. What did he say about the amount of interest that he would charge you or that he and his associates would charge you?

Objected to as incompetent, irrelevant, and immaterial.

Ans. Well, he said that they would have to have a good bonus for loaning the money that short a time on real estate that they had not seen and do it so quickly as I wanted the money, and he and I

agreed upon a difference between a dollar and a half an acre on the lands as in the place of the $5,000, and to pay for that—the use of it—I think the amount was 8, 9, or $1000. I don't remember what was the difference between the amount that the land would amount to at a dollar and a half an acre and fifty-eight hundred and some dollars.

360 238. Is that amount stated correctly in the contract for reconveyance?

Ans. I think it is.

239. At whose suggestion was this contract of reconveyance marked Ex. 1 herein made to Mr. Ford?

Ans. Mr. Leighton's.

240. What did he say upon that subject and why was it made to you?

Ans. Well, he said that it wouldn't look very well to be made straight to me for such a large interest for 60 days.

241. What interest had Mr. Ford in the land or in the transaction between you and Mr. Leighton and these plaintiffs?

Ans. None whatever, except as my agent.

242. Did Mr. Leighton know that?

Ans. Certainly he did.

243. Well, how did he know it?

Ans. Well, he knew it because Mr. Ford and I both told

361 him so, and he never was treated in the matter except as an agent by me, and I brought him here and paid his expenses and paid him a commission for doing the business agreed to before we left St. Louis. We agreed about paying him a commission for getting me the loan.

Complainants move to strike out all the answer in reference to conversations with Ford and Leighton as incompetent, irrelevant, and immaterial and as not binding upon the complainants.

244. At whose suggestion was it that this transaction was carried out—by your executing the deed and taking their contract back?

Same objection as last above.

Ans. Mr. Leighton's.

245. What did he say upon that subject?

362 Ans. Well, he said that that was the way in which his associates required it to be made for so short a loan—so short a time and so quickly done, without giving time to go and examine the lands and all these preliminaries that are required in general real estate loans.

246. At what time was this contract for conveyance made with reference to the time of the making and delivery of the deed by you?

Ans. Well, the contract and the deed or either of them may have been drawn at different times or at the same time, I don't know; but as to the delivery, the delivery was made at the time of the delivery of the deed to them. The contract was delivered to me, assigned by Mr. Ford. I consulted Mr. Ballinger very fre-

363 quently on matters relative to it, and I told him that I wouldn't

trust Mr. Ford to have the contract in his hands, signed by the plaintiffs and Mr. Leighton, to walk out of the office.

Complainants move to strike out the answer of the witness as to the conversations between him and Mr. Ballinger as hearsay.

And so I took Mr. Ford into Mr. Ballinger's office on the day before the contract was executed and delivered to me, and Mr. Ballinger wrote out an assignment for him to assign the contract to me, which he did assign there, so that when the contract was executed and acknowledged by *by* the plaintiffs and Mr. Leighton and Mr. Ford the deed was delivered and the contract was delivered to me.

364 247. At the time that Mr. Ford signed, this assignment of the contract for reconveyance had been acknowledged by the parties signing it?

Ans. It had not.

248. Had it been signed?

Ans. I don't know, sir; I don't remember. I don't know whether it had been signed or not. It hadn't been signed or acknowledged either, but it had been submitted to the parties and to me, and by me to Mr. Ballinger, and had been agreed upon before Mr. Ford assigned it.

249. I don't know whether you have answered a late question of mine distinctly as I wanted it.

Ans. Well, what is the question?

250. At what time was the contract of reconveyance delivered to you with reference to the time of your delivering the deed?

Ans. At or about the same time. It was a transaction that
365 was classed altogether, about the same time. I don't know whether the deed was delivered to me, or whether I delivered the deed, or whether Mr. Ballinger delivered it. What I do know was that the contract was assigned by Mr. Ford and signed by the complainants and Mr. Leighton and Mr. Ford and acknowledged before I delivered the deed or at the time I delivered the deed; whether it was done just then or had been done —. The papers were all executed before the delivery of either.

251. You said that you applied to Mr. Leighton for a loan of $5,000. Was that the amount finally agreed upon or was it less?

Ans. It was something less than $5,000 that was accepted by me in lieu of the $5,000.

366 252. What was it that you received?

Ans. Well, that I am not able to state. I don't know, not having received all the money myself.

253. Well, what was finally agreed upon that you should receive?

Ans. $1.50 an acre.

254. For the land?

Ans. Yes; which figured up about $4,800, I think. I received $3,200.

255. I am only asking you about the amount of the loan that was finally agreed upon, forty-odd hundred dollars. Then why was the amount specified in this contract for reconveyance fixed at $5,876?

Ans. That was the amount to be paid for the use of the money for 60 days.

256. At the time that these papers were ready for delivery
367 and were delivered, what amount of money did you actually receive?

Ans. I think that the amount was $3,200, but I don't know just what the amount was; whether there *there* was any addition to that, any other payments that was made outside of that, that was to be paid in the future, I am not able to state. I know that I got $3,250 to go home with. Whether there were any payments made as commissions or other expenses at the time in addition to the $3,250, I don't know. The balance of the money that was to be paid, that was not paid at the time, was left with Mr. Ballinger for collection, and in what way that was arranged—Mr. Ballinger being my attorney, I trusted him entirely with that, and the money that I got
368 I got when the papers were executed, I got at that time, and went home, leaving the other matter entirely with Mr. Ballinger to settle.

257. Was there a note or any other obligation given for this balance?

Ans. That I can't now state. Mr. Ballinger being my attorney and agent in that matter, I left it —. Whether there was a note given or not I am not positive. If it was it was left with Mr. Ballinger, and if there was a note given, whether it was given to me or—I mean in my name—and assigned back right there to him, or whether it was given to him in the shape of a draft or note or acceptance, I don't know. I have no recollection of ever seeing the note, if there was one. I think if there was a note it was given to Mr.
369 Ballinger, because I got the money and took the train and went home just as quick as I could after getting the money.

258. This balance was to be paid when?

Ans. Well, just as soon as these corrections or taxes, or whatever there remained to be done to perfect the title to the property named.

259. This contract of reconveyance—when it was delivered to you what did you do with it?

Ans. I put it in my pocket and took it home with me, and subsequently took it to Spencer, Clay county, Iowa, with me.

260. You didn't leave that with Mr. Ballinger?

Ans. No, sir.

261. State whether or not you left the city the same day that you got the money, taking this contract with you.

Ans. I think I did. I think I left on the first train after I
370 got through, is my recollection.

262. When Mr. Leighton suggested to you that this transaction should be put in the form of a deed and a contract of reconveyance back, what did you tell him?

Ans. Well, I told him, as I expressed in my evidence a moment ago, that if it could be made——

Objected to as incompetent, irrelevant, and immaterial.

If it could be made to secure me as well as them, I would accept it; butI——

263. Well, what, if anything, did you say to him about seeing your attorney, Mr. Ballinger?

Ans. I think I told him that I would see if it was——

Complainants object to any testimony as to conversations between the witness and Mr. Leighton on the ground that Mr. Leighton is dead, and as hearsay.

371 Ans. I would see if it could be made so that I would be protected; I would accept and do it in that way, as I wanted to get the money and go home, and I consulted my attorney, and after doing so I told him I would accept that manner of fixing the thing up.

Complainants move to strike out the answer on the grounds last above stated.

264. After the transaction was closed up and you got the money, the $3,200 or thereabouts, the amount of the money, did you show Mr. Ballinger the contract before you left town?

Objected to as incompetent, irrelevant, and immaterial.

Ans. I showed it to him because he had to take the acknowledgement of it, and he took the assignment of Mr. Ford on it before it was executed.

372 265. Did you show it to him after you received the money, before you left town?

Same objection as last above.

Ans. I don't remember whether I showed it to him after or not, because I think he gave it to me at the closing of the transaction, when I went in to get money.

266. When you got the money what did you do?

Ans. I went home immediately, as soon as I could get there.

267. Taking this paper with you?

Ans. Yes, sir.

268. Did you see or have a consultation with Mr. Ballinger before you left, after you got the money?

Ans. About the subject-matter I did right immediately after, and then I left; and I might have showed him the contract because I had it, but that was not necessary, because he had examined it and passed his opinion upon it.

373 269. Had you any consultation with him as to the legal effect of this contract of reconveyance after you got the money and delivered the deed, or was it before?

Objected to as incompetent, irrelevant, and immaterial.

Ans. That was before it was executed; I had consulted him about its legal bearing after it was drawn, before it was executed.

270. When next did you consult with Mr. Ballinger and talk about these matters?

Ans. Never until about the 25th of February last; never have seen him since that 17th day, or the day that I got the money and

went away—I think it was on the 17th day of February, 1875, *1875;* haven't seen him again until some time in that last February, to my recollection.

271. Who drew the answer for you in this case?

Ans. Mr. Ballinger——

374 Complainants move to strike out the question and answer as incompetent, irrelevant, and immaterial.

That is, he drew the skeleton of it. He didn't draw it as attorney; he drew it——

272. Did he draw it from his recollection, or yours, of the transaction?

Same objection as last above.

Ans. Well, I suppose I had a certified copy of——

273. Answer the question, Mr. Wallace, and it will be shorter.

Ans. He must have drawn it from his own recollection, for I proposed to go out and attend to some little matter in town while he drew it, as I had to go out on the train that night; but I remained while he drew it. I suppose — drew it from his own recollections and my papers and from my recollections.

274. You have testified that you told Mr. Leighton that
375 you wouldn't sell these lands for any such sum as a dollar and a half an acre?

Ans. I did.

Complainants move to strike out the question and answer as incompetent, irrelevant, and immaterial.

275. What was the value of the lands at that time?

Ans. Some of the lands I valued more than I did others of them. I valued them at from $7 to $12.50 an acre.

Objected to on the ground that *that* it is incompetent, irrelevant, and immaterial, no foundation being laid to show that he is familiar with the value of real estate.

276. What knowledge had you of the value of these lands at that time?

Ans. I had a general knowledge of real estate in Iowa, having been in the real estate business here for some years; and I
376 had, on the purchase of a portion of these lands from N. A. Cowdrey, saw there an appraisement of the lands by a committee or commission appointed by either a court or railroad company or the bondholders and the railroad and the court, I don't know which; of which commission, B. F. Allen, of Des Moines, whom I knew by reputation, and some of the other members of the commission, whose names I don't remember, were among the appraisers of the land for a sale or settlement of the affairs of the Des Moines Valley railroad, the lands being taken by Mr. Cowdrey as the first selections, he having, I believe, the first, as he showed me—the selection of the first lands out of the — for the bonds of

377 the road that he held, after the appraisement was made; and other knowledge and information that I had and got relative to the value of the lands in those counties in Iowa.

277. Have you ever been over these lands, or had you at any time?

Ans. I hadn't at that time been over the lands. I was over them afterwards.

278. Had you at that — bought or sold other lands in that section of Iowa?

Ans. Yes, sir.

279. What amount?

Ans. Well, I had during the winter before bought 15,000 acres in different counties in the northwest part of the State—Buena Vista, Clay, Sioux, Hancock, and Dixon counties.

280. And at the time that you had this transaction with Mr. Leighton and the plaintiffs here what did you hold these lands at?

378 Objected to as incompetent, irrelevant, and immaterial.

I held them, as I say, from $7 to $12.50 per acre. Mr. Corbin——

281. Were they, in your opinion, worth that about that time?

Same objection as last above.

Ans. I so considered them.

282. Did these—any of these plaintiffs at the time of this transaction talk to you about buying this land?

Ans. Not at the time of this transaction.

283. Did they during this transaction talk to you about buying the land?

Ans. Not that I know of—anything except as carried out in this transaction. The details of that might have been talked over a good many times.

284. With these plaintiffs or any of them?

Ans. With some of the plaintiffs, and perhaps all of them,
379 and perhaps not; with regard to that I can't tell, because there was —. The whole matter had been arranged before the papers were submitted, in the first place, to Mr. Leighton or Mr. Leighton's attorney, except the details of carrying it out.

285. Were any of them present at any of these conversations with Mr. Leighton that you have referred to?

Ans. No, sir; not to my knowledge; not to my recollection, at any rate. I might have met some of the gentlemen before that time, as I, of course, meet anybody here when I come here, being acquainted with most of them.

Complainants move to strike out all the testimony of this witness relating to the conversation between himself and Ballinger and Ford—

380 1. Because none of the plaintiffs were present at such conversations, and the same were hearsay.

2. Because such conversations are immaterial and irrelevant.

Complainants further move to strike out all that part of the testi-

mony of the witness relating to conversations between himself and Mr. Leighton—

1. Because Mr. Leighton is dead and these complainants claim under him.

2. Such conversations are hearsay.

3. They are incompetent, irrelevant, and immaterial.

Cross-examination by Mr. HAGERMAN:

286. What is your age at present?

Ans. About 42.

287. Where were you living in the spring of 1875?

Ans. St. Louis.

381 288. How long have you been living there?

Ans. Since the winter of 1873'–4; about the first of December, I think, my family came to St. Louis—1874

289. Where had you lived prior to that time?

Ans. Keokuk.

290. In what business were you engaged in the city of St. Louis, in the spring of 1875?

Ans. In the real estate business.

291. Where was your office?

Ans. I was—my office was in my hat or saddle, wherever I was. My agents were John S. Mellen & Co.

292. What was the nature of your real estate business?

Ans. Well, it was the purchase and sale of real estate, and I had a good deal of other business at that time. I had a contract for building a railroad and had several other matters in hand in St. Louis and New York.

382 —. What was your business in Keokuk before you went to St. Louis?

Ans. Real estate and auction business or auction and real estate business.

294. What kind of auction business?

Ans. Any kind——

Objected to as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Ans. Any kind of auction business that anybody had to give me

295. Well, auction of personal property of all kinds?

Ans. Any kind of property that anybody wanted sold, when I was in the business here.

296. Did you have a real estate office here?

Ans. Yes, sir.

297. Where was it?

Ans. On Main St.

298. At your auction store?

Ans. Yes, sir.

383 299. In the real estate business in St. Louis did you buy and sell real estate on your own account or for others?

Ans. On my own account.

300. You were not then in business, then, in St. Louis as a real estate agent selling upon commission?

Ans. No, sir.

301. You were what is known as a speculator in real estate?

Ans. Yes, sir; I suppose so.

302. When did you buy these lands that are in controversy in this case?

Ans. I bought them some time during the winter of 1874–'5. Some of them, I presume, I got on the 28th day of November and the others following that, but perhaps a deed was not made on that day, but the contract for it from Mr. Cowdrey was made on the 28th of November, 1874.

303. From whom did you get the lands?

384 Ans. The most of them from N. A. Cowdrey.

304. And from whom the others?

Ans. Although the deed may not have come from him, the deed either come from him or from his brother-in-law, E. O. Palmer, of Algona, Iowa. He was his brother-in-law and agent. Whether the contract came direct from Cowdrey to me, the purchase was made with Cowdrey.

305. Who were the other parties?

Ans. D. W. Kilbourne.

306. Any one else?

Ans. No, sir; no one else. I bought all the lands from Kilbourne and Cowdrey. Although the conveyance may have come from Palmer, the contract of purchase was made with Cowdrey, and whether all the lands were conveyed by Cowdrey, except those conveyed by Kilbourne, I don't remember now exactly.

307. What did you pay for these lands? I mean cash or

385 other property.

Ans. Other property.

Respondents move to strike out the question and answer as incompetent, irrelevant, and immaterial and not proper cross-examination.

308. What was the other property?

Ans. Missouri war scrip.

309. Did you buy these lands without having seen them yourself?

Ans. Yes, sir.

310. At the time you made the deed to Leighton and the plaintiffs you had not seen the lands?

Ans. I had not.

311. Had you prior to that time sold any lands in Iowa that you had got with this war scrip from Cowdrey or others?

Ans. Yes, sir.

312. What sales had you made?

Ans. Well, I don't—can't tell exactly, because I had at one time about 15,000 acres there, and I had sold at different times

386 different lands, and I can't tell just what lands nor at what times.

313. Didn't you sell in large amounts?
Ans. Yes, sir.
314. You sold to men who bought to sell again, did you not?
Ans. I suppose I did.
315. Well, you didn't sell to settlers, I mean?
Ans. No.
316. Well, now, can you tell how many acres you had sold prior to the time you made this deed to the plaintiffs?
Ans. No, sir; I cannot.
317. Can you give the names of any of the parties to whom you had sold prior to that time?
Ans. Yes, sir.
318. Well, please do so.
Ans. I think I sold some of them to H. Levin, of St. Louis.
319. And the county in which the land was.
Ans. I can't tell that. My lands were in the counties of
387 Sioux, Clay, Dickinson, Hancock, and Buena Vista, I think.
320. Give the names of others beside Levin to whom you sold.
Ans. Well, I think Irwin, of St. Jo.
321. What is his first name?
Ans. G. M. Irwin.
321½. Do you know in what county his lands were?
Ans. In the same counties.
322. You can't name the special counties?
Ans. No; they were——
323. Well, who besides?
Ans. Besides that to a man by the name of Ellis, I think; but I am not positive what—Ellis or Allis. I can't say exactly.
325. What was his first name?
Ans. I can't tell.
326. Do you know where he lives?
Ans. No; I do not.
327. Do you know his first name?
Ans. No, sir; I do not. I don't remember it.
328. In the same counties?
Ans. Yes, sir; in the same counties. Ellis or Ellery, or
388 some such a name, and not knowing the names personally—these other men, I knew their names, so that I have them without reference to this particular transaction. I remember their names without reference to this; but his name, I don't remember just what it was. Ellis, or something to that effect.
329. Now, who besides these parties named had you sold to?
Ans. Of these lands spoken of?
330. Yes, sir.
Ans. None that I know of?
331. Now, afterwards you sold lands, did you not?
Ans. Yes, sir.
332. After the making of this deed to these plaintiffs and Leighton?
Ans. Yes, sir.

333. Well, who did you sell to after that?

Ans. I don't remember now who I did sell to.

389 334. How many persons altogether did you sell to?

Ans. I don't know. I got deeds under contracts from Mr. Cowdrey that were paid for. I got the deeds after this transaction and who the names were. It was done through agents, and I don't remember who the grantee was or grantees.

335. Can you remember about the number of people that bought these 15,000 acres of land?

Ans. The body of it?

336. Yes, sir.

Ans. That is about that number. I can't remember; the names I have given and the transaction spoken of here comprised the bulk of the 15,000 acres.

337. Do you remember about how many acres you sold to Levin and Irwin and Ellis, in round numbers?

Ans. Well, something over—well, I would say about
390 three—say from 2,800 to 3,500 acres to each, but just the amount I don't know.

338. When did you make the last of the sale of your lands in Iowa?

Ans. Some time in 1876.

339. To whom was it sold?

Ans. I just stated that I didn't know.

340. After you had sold to Levin and Irwin and Ellis and had had this transaction with the plaintiffs and Leighton how many—how much land had you remaining undisposed of in Iowa?

Ans. Well, I don't remember now.

341. Well, approximately?

Ans. Well, I can't tell you.

342. About how much?

Ans. I got one or two or three deeds from Mr. Cowdrey after I had transferred the bulk, but what they conveyed I don't remember.

343. Can you remember about how many acres?

Ans. No; I can't.

391 344. 500?

Ans. I don't remember. It was in smaller deeds and smaller tracts, and I don't remember.

345. Was it as much as 100 acres?

Ans. Oh, yes, sir; several hundred acres; but I don't know?

346. Was it a thousant?

Ans. I don't know.

347. 2,000?

Ans. I don't know.

348. 1,500?

Ans. I don't know.

349. Was it as much as 500?

Ans. Well, I don't know; it was several hundred acres. I don't know because it was in different deeds and at different times that I got it.

350. Did you sell any of these lands to Crafton?

Ans. No, sir.

351. John D. Crafton?

Ans. No, sir.

352. Did you sell them to any person for him?

A. No, sir.

392 353. Were these sales that you made all for cash?

Ans. No, sir.

354. Were any of them for cash?

Ans. Yes, sir; some of them were.

355. Who bought for cash?

Ans. Well, I don't remember now. Some of them were part cash and part other consideration.

356. Who bought wholly for cash?

Ans. Well, I can't say that now.

357. How was it with Irwin?

Ans. Irwin was all for Missouri war scrip.

358. How was it with Levin?

Ans. Levin was part cash and part Missouri war scrip.

359. How was it with Ellis?

Ans. Ellis was part cash and part Missouri war scrip.

360. Did you sell any for cash absolutely?

Ans. Yes; I sold some of the lands that I had there for cash.

361. But you can't give the names of the purchasers?

Ans. These parties in the big transactions—either I took

393 scrip at 45c. on the dollar for these lands. I was selling it at 60c. and took it at 45c.

Complainants move to strike out the answer as irresponsive.

362. But you can't give the names of the purchasers?

Ans. I cannot.

363. Will you please give the names of the mortgages that you put upon this Iowa lands?

Objected to as not proper cross-examination.

Ans. I gave no mortgages on Iowa lands except the one in this transaction—this suit.

The reporter here being obliged to leave on account of a prior engagement, Mrs. E. H. Rogers, by consent, is sent for, who continues this deposition, as appears by her transcript hereto attached.

STATE OF IOWA, } *ss:*
Lee County, }

394 I, Fred. P. Barnett, a notary public in for said county, hereby certify that, in pursuance of the stipulations hereto attached, came before me, at my office in the United States circuit court chambers, in the city of Keokuk, county and State aforesaid, E. R. Ford, William Ballinger, and John A. Wallace, witnesses produced upon the part of respondent, John A. Wallace, on the dates in my said transcript set forth, who, being first by me duly sworn to testify in said cause, were examined in my presence by the counsel, as

in the transcript set forth, and their examination so given was by me at the time taken down in short-hand. I further certify that said transcript (being 68 pages) is a true and correct transcript of said examination and depositions of said witnesses, together
395 with the objections and motions made during said examination. I further certify that the complainants were present by their counsel, Hagerman, M'Crary & Hagerman, and the respondents by their respective counsel, Craig, Collier & Craig and H. C. Noyes and W. B. Collins, and that I am in no way interested in the event of this suit.

Witness my hand and seal notarial this 3rd day of August, 1882.

[Fred. P. Barnett, Iowa, Seal.]

(S'g'd) FRED. P. BARNETT,
Notary Public.

Notary Fee.

Taking & transcribing @ 15c.	$28 50
Certificate	50
Mrs. E. H. Rogers' bill	10 85
	$39 85

396 KEOKUK, I'A., *July* 24, 1882.

EDW'D JOHNSTONE *et al. vs.* JOHN A. WALLACE *et al.*

Cross-examination of JOHN A. WALLACE continued by Mr. HAGERMAN:

Where do you reside now?

In the city of St. Louis.

364. Where have you resided since 1875?

In St. Louis.

365. What business have you been engaged in there?

Well, I haven't been there much of the time.

366. During the time that you have been there what business have you been engaged in?

Real estate.

367. In the same way—your office in your hat?

My office? At my agents' office generally.

368. At what place in St. Louis? Who have been your
397 agents in the real estate business since 1875?

Jno. S. Mellen & Co.

369. Was John Zwart one of them?

He was in 1875.

370. Has he been with them ever since?

No, sir.

371. Is he with them now?

No, sir.

372. Have you been actively engaged in the real estate business since 1875 down to the present time?

Part of the time.

373. How much of the time?
I can't tell how much I have been active. I am generally active in anything I do.
374. What have been your principal transactions in real estate in St Louis since 1875?

Obj. to as immaterial, irrelevant, and not proper cross-examination.

I can't tell from memory.
375. You say you have not been there a great deal of the time since 1875?
398 No, sir; it is been my home, but I have been in New York most of the time since 1874.
376. What have you been doing in New York?
Attending to my business.
377. What business?
Whatever I had to do—real estate, stocks, bonds, or anything else that I have dealt in.
378. What has been your occupation and business in the city of New York?
Attending to my own business.
379. What name do you call it?
Attending to my own business, whatever I had to do.
380. Where has been your office there?
Well, a part of the time at 11 Wall St., a part of the time at 84 Nassau St.—at different places.
381. Have you had an office of your own there?
I have had; yes, sir.
382. Where was that?
That was in 11 Wall St.
399 383. Have you an office there now of your own?
Not of my own; I have desk room in an office.
384. With whom?
With Mr. Tyler and Mr. Mitchell.
385. Whereabouts?
84 Nassau St.
386. What is their business?
One of them is an attorney; the other is a railroad man.
387. How long have you been officing with them?
Well, for some time.
388. Have you a desk there?
I have had when I have been in New York.
389. Are you selling real estate on commission in New York?
No, sir.
390. Are you buying real estate there on your own account?
Buying and selling.
391. Have you bought any recently?
I suppose I have.
392. When did you buy your last real estate?
I can't tell now.
400 393. Where?

I can't give the particulars of it now.

394. Have you within the last year bought any real estate?

Def't- objects to this line of examination as immaterial, irrelevant, and not proper cross-examination.

395. Question read.

I can't recollect exactly to tell you.

396. Have you within the last two years bought any real estate?

I presume I have, and sold some.

397. Where?

I don't know now. I have dealt in real estate all over the United States, whenever I see a chance to deal; when I don't I don't deal in it at all.

398. Have your transactions all been large transactions?

Mostly large transactions.

399. What other large transactions have you had in real
401 estate since 1875, in any part of the country?

O, a number of them; I can't give any details.

400. Have you bought any real estate within the last three years, or sold any?

I have; I suppose I have; I have sold some.

401. Where?

I can't locate it now from memory.

402. How many mortgages have you made upon real estate since 1875?

Obj. to for the same reason as above.

I can't tell, sir.

403. Have you made any?

I may have; I think I have.

404. Name one where you have made any mortgages on real estate since 1875, in any part of the country.

Since 1875?

405. Yes, sir.

402 Well, I can't give that exactly; don't know just what; I couldn't describe them in detail now.

406. Can you give the name of a party to whom you have made a mortgage or tell where the real estate was upon which you have given any mortgage since 1875?

I can't tell. I have so many transactions that I can't tell any specific or definite transaction here now.

407. Will you swear, Mr. Wallace, that since 1875 you have made any mortgage upon any real estate belonging to yourself and borrowed money upon it?

Obj. to as above.

I won't swear that I have or have not positively; I don't remember.

408. Have you any real estate anywhere in your own name now?

I presume I have.

409. Where?

403 Obj. to for the same reason as above.

Well, I would have to refer to my papers to tell where it is; I don't know.

410. Can you tell the State in which it is?

I can't here now.

411. Can you tell the county in which it is?

No, sir.

412. Have you any in St. Louis?

I own some in St. Louis, but whether it is in my name of record or not I am not quite positive on that subject.

413. Where is it?

In the city of St. Louis.

Obj. to as above.

414. Whereabouts in the city of St. Louis?

Well, I can't describe it, as I say, now.

415. Can you give the street?

No, sir.

416. In whose name is it held for you?

Well, I can't give the name here.

404 417. Have you any in New York?

(Mr. CRAIG:) I object to this examination. It is so palpably immaterial and irrelevant and so obviously for a purpose wholly different from anything involved in this suit that the witness should not answer.

(Mr. HAGERMAN:)

418. Mr. Wallace, will you answer my question?

I can't remember, nor give details from memory.

419. Have you not recently conveyed by warranty deed an undivided half of your interest in these lands in controversy to one Wm. Simmons?

I have.

420. Who is Wm. Simmons?

Wm. Simmons is a railroad contractor and builder.

421. Do you know him?

Yes, sir.

422. Where does he live?

In Indianapolis.

405 423. Did you make this contract with him personally?

No, sir.

424. Did you see him at the time you executed and delivered the deed?

I did.

425. Did you make a contract with him about it?

No, sir; I didn't make a contract with him personally.

426. Who did make the contract?

Mr. Weston.

427. What did he pay you for this deed?

Def'ts' att'y insists that witness ought not to be obliged to answer these questions for the reasons that, the conveyance having been made after the suit was commenced, it can have no relevancy to the result accomplished, and that this cross-examination is not proper.

Ans. I don't propose to answer unless I have to.

428. You refuse to answer?

406 Under the direction of my attorney, I do.

429. Was not the consideration of that conveyance solely that Simmons should assist you to prosecute this suit?

No, sir.

430. What other consideration was there?

For the same reason, I decline to answer.

431. Who is Weston?

Milton Weston.

432. Who is he?

He is Milton Weston.

433. What is his business?

You must find out from somebody else than me. I suppose——

434. Don't you know?

I know something about what his business is. He had so much business that I don't consider I am called upon to divulge his business, or expose his business, or advertise his business.

435. Then you decline to answer?

407 I have not declined to answer.

The attorneys for the defense do not object to the witness answering what Milton Weston's business is, if he knows.

A. Then I will answer what I know about it.

436. Who is Milton Weston?

(De'ts' Att'y:) Answer the question, Mr. Wallace.

A. He is a railroad builder.

437. How long have you known him?

Since 1874.

428. Where does he live?

In the city of Chicago.

439. Was not the object of this conveyance to Wm. Simmons to obtain money to prosecute this suit?

Obj. to for the same reason as above.

A. Partially; it might have been.

440. Was it not?

Partially, it might have been, is my answer; partially, it was, if that will answer it better.

408 441. How much money did he give you on account of it?

Def'ts' att'ys object, and instruct the witness not to answer if he does not desire to do so.

Witness declines to answer.

442. Did you get any money at all from him?

Same objection.

A. From whom?

443. From Wm. Simmons or Mr. Weston?

I have had transactions with Mr. Weston since 1874. I have got money from him and he has got money from me at various and different times—a good many times during the time since 1874 and '75.

Answer objected to as not responsive.

444. Please answer the question, now. Did you get any money from Wm. Simmons or Mr. Weston on account of this conveyance; and, if so, how much?

409 I didn't get any money from Simmons at all. I have got money from Mr. Weston on matters between us since 1874, and he has got money from me, and there has been always an open account between us on money matters. I have had money from him and through him a great many times within the last year.

Objected to as not responsive.

445. Did you get on this conveyance, this deed, any money from him?

I decline to answer that.

Objected to as not proper cross-examination, and as irrelevant and immaterial.

446. You came with Mr. Ford to Keokuk in 1875?

Ford came with me.

447. Do you know what time you came here?

Some time in the fore part of February—before the 17th; I don't know how many days before.

410 448. You had had conversation with Ford at St. Louis before you came here?

Certainly.

449. About coming to Keokuk?

Certainly.

450. When you came here you say you stopped at the Patterson House?

Yes, sir.

451. While there you had interviews with Mr. Leighton?

Yes, sir.

452. In Mr. Ford's presence?

Sometimes in his presence, sometimes not.

453. Did you ever, in the presence of Mr. Ford, have any conversation with Mr. Leighton?

I presume I did; but I had a good many conversations with Mr. Leighton when Mr. Ford was not present. Mr. Ford, introducing the subject, walked away, as I stated in my direct examination.

454. Did you ever have any conversation with Mr. Leighton

411 in Mr. Ford's presence in which the subject of the loan or of interest was talked about?

I can't tell; I presume I did, though, because we talked of it every time we met, after I came here, until the preliminaries were arranged.

455. Did you conceal the subject of your conversation with Leighton from Mr. Ford?

No, sir; I concealed nothing.

456. Did you tell Mr. Ford fully of your conversations with Mr. Leighton?

I don't think I did.

457. Mr. Ford was your agent?

He was my agent.

458. And you paid him for coming?

I suppose I did. I paid his expenses and paid him besides.

459. Now, you say Mr. Leighton in these conversations spoke of his associates in the bank?

His associates in the bank was the only way in which
412 he referred to the parties until the preliminaries had been arranged and after the details of this mortgage or reconveyance or option contract had been agreed upon.

460. Did he speak of his associates in any particular bank?

Yes, sir; in the Keokuk Savings Bank.

461. Did he say that the bank was to furnish the money or his associates in the bank?

His associates and himself.

462. Was it to be a bank transaction or was it to be between the individuals and himself?

Well, he referred to—the arrangement was made with him between me and him; as for the carrying out of it he referred to his associates in the bank.

463. What else did he call them?

When the transaction came to be closed he called them
413 Mr. Davis, Mr. Connable, and Mr. Johnstone.

464. Before that?

His associates in the bank.

465. In the Keokuk Savings Bank?

In the Keokuk Savings Bank.

466. Did he tell you what his position was in the bank?

He did not, but he referred to the carrying out of the transaction in that way in our first talks of the matter and arranging it; that's the way he spoke of it until the matter had been agreed, I suppose, between him and his associates and between me and him, as we had frequent interviews. Of course, he would see his people and I would see my attorney or consult with my friend in the matter at frequent intervals, and during those intervals he called his associates in the bank as referring to those who were with him or would be
414 with him in the carrying out of the transactions that we were negotiating about.

467. Do you remember of any interviews with them—with these associates—at any time before the deed was delivered and the contract of reconveyance delivered?

I met, I think, all of the gentlemen, but what those interviews were I don't remember.

468. Didn't you meet Mr. Davis?

Yes, sir.

469. Didn't you talk to him?

I presume I did.

470. Didn't you tell him how you had bought these lands?

I presume I did.

471. Didn't you tell him that you wanted to sell these lands?

I don't think I did, except in the way and manner that Mr. Leighton and I had agreed.

472. Did you ever tell him that you wanted to make a loan upon them?

415 I never talked to Mr. Davis, that I remember, about that transaction until Mr. Leighton and I had agreed upon the basis of that transaction.

473. Did you talk to either Judge Johnstone or Mr. Connable about it?

I presume I did. After the thing had been arranged between Mr. Leighton and myself I presume I talked to all three of the gentlemen—how many times or how much I don't know.

474. Can you fix any time or place when you had such a conversation?

No, sir; I can't.

475. Did you ever say to any of them that you were making a loan on these lands?

I don't know that I said any more to them than to talk about carrying out the arrangement that Mr. Leighton and I had made.

476. Did you ever, in any conversation with them, use
416 the word loan?

I can only answer it by saying that I may have talked with them about the details of that arrangement I had made with Mr. Leighton and I may not have talked with them about the details of it at all, because my talk about that was always with Mr. Leighton, before and after. I don't remember any conversation that took place between the gentlemen and myself, although I know that I met them, and the matter must have been talked over; it was mainly, I think, in regard to my anxiety to get through—to get some money and be off—how that could be arranged.

478. Where was Mr. Leighton's office at that time?

In Major Collins' office or Maj Collins' office was in his. Going there, Mr. Leighton would say, "Come down to my office,"
417 and Maj. Collins was there.

479. Did you have frequent conversations with Mr. Leighton in Maj. Collins' office after this transaction?

After the arrangement had been agreed upon we went there, as I stated in my direct examination, for Maj. Collins, as Mr. Leighton's attorney, as I understood it, to examine my papers. I presume, my being here for that purpose, that we talked casually about this matter, but as to the details we had arranged them.

580. Didn't you talk there about what this agreement was between you and Mr. Leighton?

Not that I remember.

481. You think, then, that this agreement between you and Mr. Leighton, where he spoke about the interest and about avoid-usury and about the loan, was in a private conversation that you
418 and he had together at the Patterson House?

I think it was in *in* the arranging of the preliminaries for this transaction at the Patterson House, in the interviews prior to going to examine the papers. I think all that was arranged, talked over time after time between Mr. Leighton and myself.

482. It was between you and him alone?

Between him and me alone, so far as arranging that part was concerned. Any little details of settlement after that may have been talked in his office—may have been talked in Mr. Davis' office, may have been talked in Mr. Ballinger's office, or may have been talked on the street with the gentlemen.

483. Didn't you know, Mr. Wallace, that Col. Leighton
419 himself had previous to that time bought and sold Iowa lands?

Yes; he seemed to be when I first talked of it.

484. Didn't you know that Col. Leighton was not a lender of money, but rather a borrower of it?

No, sir; I didn't. I always understood him to be a moneyed man—money to let or invest in anything that he chose to go into. I so understood that Mr. Ford——

Obj. to witness understanding from Mr. Ford.

I can only answer the question by what I did understand; that was for years in St. Louis——. I understood in Mr. Mellen's office that Mr. Leighton was putting money in some lands with him in St. Charles Co., Missouri. I don't know what the transaction was, but that he was putting in money was the understanding. After some years I met him frequently in St. Louis, and that was
420 my understanding from what I could gather from all sources, that I paid no particular attention to; but, from general repute, what I understood was that he was putting money into some enterprise in St. Louis. When Mr. Ford agreed to get me the money he said he would get it from Mr. Leighton.

485. Now, Mr. Wallace, will you be kind enough to fix a time and place when you ever spoke in Mr. Ford's presence or in the presence of either of these plaintiffs about making a loan and about the payment of interest?

I can't name any time or date as to that, because the dates at which I talked with Mr. Leighton I can't fix. It was some time in the forepart of February.

486. You don't understand my question. I didn't ask for
421 a conversation with Col. Leighton now, but for conversations with Ford or either of these plaintiffs in which you referred in any way to this transaction as being a loan or to the payment of

interest. Can you fix the time and place of such a conversation with Ford or with either of these plaintiffs?

I can fix the date, first, by referring to the register of the Patterson House; I can fix the exact date at which I talked to Mr. Ford on the subject, in which Mr. Ford told me—I came to him for a loan—that he had got to come to Keokuk for the loan for me—and which he got it for me—that he had nothing else to do with it; that he had nothing to do with the loan, and I paid for it. He had nothing to do except as my agent at the time of this trans-
422 action. That was week before last.

Last part of answer objected to as not responsive.

487. I am asking you, during these negotiations, in 1875—— In my direct examination I have stated——

(Mr. HAGERMAN:) I object to that.
(Witness:) I have answered that question fully.

488. I want you to answer me now the direct question whether, when you were here in 1875, you can fix any time and place at which you had a conversation with Dr. Ford or with either of these plaintiffs in which this transaction was referred to as a loan or in which the subject of your paying interest was mentioned or a bonus in lieu of interest was mentioned?

Ans. You don't put Mr. Leighton's name in there?

489. No, sir.

423 Ans. I can only say, in the conversations with Mr. Ford, from the first until the details of this was agreed upon between Mr. Leighton and myself, I must have talked to Mr. Ford about it in that connection, because I never talked about it at all after that was arranged and the time fixed for the examination of the papers in any other way except as a loan that I was asking to get.

490. Then I understand that you do swear that in 1875, while you were here and before the transaction was closed, you did tell Dr. Ford that it was a loan, and that this bonus was in lieu of interest?

Ans. I don't say anything of the kind; I say that I talked to Dr. Ford and he to me about the matter of the loan prior to the
424 closing of this transaction. After that I had nothing to talk to him, except about the carrying out of the details and of paying him his commission.

491. Did you, prior to closing the transaction—that is, the delivery of the deed and the option contract—while you were in Keokuk, in 1875, at any time tell Dr. Ford that this was a loan?

Ans. I had no occasion to tell Dr. Ford that this was a loan. He was to tell me what he could do for me. We talked of it in that way. I had no occasion to tell him that. We talked of it as a loan. I had no occasion to tell him it was a loan, because I had applied to him for a loan and he came here to get a loan.

492. When and where did you ever tell him that it was a loan,

and that this advanced price which was mentioned in the
425 option contract was in lieu of interest?

Ans. We must have talked of it while here.

493. Will you swear that you did tell him that this advanced price was in lieu of interest?

Ans. I say that I had no occasion to tell him; that was already talked over and agreed upon. He told me at that time what could be done. He had private talks with Mr. Leighton himself. He told me, as did Mr. Leighton subsequently, what could be done. Of course, Mr. Ford was paid for the negotiation when he got through and I — with Mr. Leighton then.

494. Then I understand it was Ford and not yourself who made the negotiations with Leighton?

Ans. No; I paid Mr. Ford for making the negotiations. It was done by him—by me, too; the talks were frequent be-
426 tween Ford and myself and between Mr. Leighton and myself after we came here, because I was in a great hurry. Mr. Leighton came to see him at the hotel several times before we got this settled, and Mr. Ford went to see him several times. I talked to Ford, of course.

495. Mr. Ford was acting for you?

For me?

496. In making the negotiations with Leighton?

Certainly.

497. I will ask you specifically whether, prior to the closing of this transaction, you ever had any conversation with Judge Johnstone in which you referred to this transaction as a loan.

Ans. I can only answer that by telling what transpired before between Mr. Leighton and myself.

498. I want you, Mr. Wallace, to answer my question di-
427 rectly. I have asked you, now, with reference to a conversation with Judge Johnstone and not with Col. Leighton, and the question I ask is this: Did you, at any time prior to the delivery of the deed and the option contract, have any conversation with Judge Johnstone in which this transaction was spoken of as a loan? I want a direct answer to that question.

Ans. Well, that I can't tell, whether I did or did not, as all the arrangements were arranged between Mr. Leighton and myself as to what it was and how it should be completed.

499. Did you, prior to the execution and delivery of the deed and option contract, have any conversation with Mr. Davis in which this transaction was spoken of by you or by him as a loan, or in which the subject of interest was mentioned?

428 Ans. I can only answer that in the same way that I answered the other question.

500. That is, you don't know whether you had such a conversation or not?

Ans. I don't know whether I had such a conversation with Mr. Davis or whether that was referred to as a loan, because the matter had been arranged between me and Mr. Leighton, and, there being usury in it, I wouldn't very likely talk to the whole town about

what that matter was, nor would I be supposed to talk very much with a great many gentlemen about a transaction that was being—a portion of it had already been—arranged with the man I came here to do it with.

501. Then you had made a specific contract for usury with Mr. Leighton?

Ans. As it was carried out in these papers.

429 502. But you never told Mr. Davis or Judge Johnstone of that?

Ans. I told them of the manner of carrying it out; they could see from the transaction what it was without talking of it. Whether I talked of it or not, I don't know.

503. What did you tell Judge Johnstone or Mr. Davis as to the manner of carrying it out or what the transaction was?

Mr. Leighton assured me he had told them all about the details of that.

504. You said a moment ago that you told them. Now, then, what did you tell Judge Johnsone or Mr. Davis?

I didn't say that. You say that.

505. You didn't say a moment ago that you told all of these gentlemen?

No; I say that that having been arranged between Mr. Leigh-
430 ton and myself, it was not likely that I should have told the town or different people about it, when it had been arranged between Mr. Leighton and myself. He told me that his associates in the bank had accepted the terms of that transfer and retransfer and the terms had been arranged. I don't think that I would have talked to Mr. Davis or Mr. Connable or Mr. Johnstone on that subject at all as to the carrying out of the arrangements that we had made. I don't think I would, yet I might have done.

506. Why do you, when I ask you if you had such a conversation or not with Judge Johnstone or Mr. Davis—why do you always bring in the conversations that you had with Col. Leighton? Is that because you don't want to answer my questions fairly?

431 No, sir; I say that I don't remember that I did have such conversations with them. It is more than likely that I did not. I don't know. I can't say.

507. Now, I will ask you the same question about Mr. Connable, because I want to be specific.

Ans. I answer that in the same way that I answered the other question.

508. Now I will put the question. I don't want you in this answer to bring in or to refer to conversations that you had with Mr. Leighton, unless these plaintiffs were present, because I am not asking you about that. I am asking you now whether you had any conversation with Mr. Connable in which you spoke of this transaction as a loan or spoke of the subject of interest being paid or of usury?

Ans. I can only answer that in the same way by stating
432 the facts.

509. The same way you answered it is that you suppose you never had such a conversation with Mr. Connable?

Ans. I don't know that I did. I can't say whether I did have or did not have, as from the arrangements of the matter before I don't suppose that it was necessary. I might have had or might not have had; I couldn't say.

510. You say that you made a usurious contract with Col. Leighton, and he spoke of it as being a usurious contract?

Ans. We spoke of it in all the bearings that it had both *pro* and *con*.

511. Answer my question. You have said that you made a usurious contract with Col. Leighton, and that you and he spoke of it as a usurious contract. Is that true?

Ans. No. I don't accept it as the answer to any question
433 that I have given. You say it; I don't.

512. Did you make a specific contract with him for usury?

Ans. I can only answer it by making the statement of the case—what we did make; that is the only way I can answer it.

513. Did you speak to him about usury?

Ans. He spoke to me about the manner of carrying out the transaction in a way that would suit his associates, and that, as I answered awhile ago, would be usurious, and therefore they would make the paper to Mr. Ford and he would assign it to me; it would look better.

514. Col. Leighton acquiesced in it?

Ans. Col. Leighton acquiesced in it by agreeing to carry out the contract.

515. You agreed to it?

Ans. Certainly I agreed to it when I accepted it; he agreed to it when I accepted it.

434 516. Col. Leighton told you that he had communicated that matter to his associates?

Ans. I don't say that Col. Leighton told me just those words, because we talked a great many times about it. He told me that he would have to confer at a number of times with his associates. What his conversations or references with them were I don't propose to put down here as a part of my evidence, because I don't know anything about it. We talked of the matter in hand when he came to me. He talked with his associates after our conversation, I suppose; at any rate, he came back to me with a confirmation of what we had talked of.

517. Col. Leighton is now dead?

Yes, sir; I understand he is.

518. When were you in Clay and Sioux counties after the
435 making of this deed and the option contract?

Ans. I can't tell how long after; some time not long after.

519. Before the expiration of the sixty days?

Ans. I don't remember what time it was; I couldn't say. I had so much business in that time I can't tell just when it was. I went to Storm Lake and drove over these lands up to Spencer. I was there twice, but just when those dates or times were I can't tell.

520. How long apart were those two times that you were there?
Only a few months.
521. Was it in 1875?
In 1875.
522. Did you go from here up there?
No, sir.
523. You went very soon afterwards?
I don't know just how long afterwards.
524. You know that you went before the expiration of the option contract.
Ans. I don't know whether I did or not.
436 525. You went up there to try and sell the lands?
Ans. I went up there to see some parties that had written to me about selling lands.
526. Did you take the option contract along with you?
Ans. Yes; I took it always with me after it was executed until after it was put of record in Clay county.
527. When did you put it of record—the first time or the second time?
Ans. I don't remember the time as regards that.
528. You said that you took it both times until you put it of record.
Ans. Whenever I went there or anywhere else I took it with me until after I put it of record. Then I couldn't put it in my pocket.
529. What is your best impression as to whether you left it for record the first time you were there or the second time?
437 Ans. I can't say when the the first time was or the second time was. I know it was not a great while after this matter was attended to.
530. I don't want a long answer from you every time. My questions are clear.
I say I can't tell. I think, though, that I must have put this instrument of record the first time that I went up there after the execution of it. I don't know the date of that record, even. I suppose it is in the paper. I think, perhaps, it was the first time that I went there. I don't know that it was. I went there twice in the spring—the early spring time. The difference between those times I can't tell.
531. Do you remember what times you went there?
Ans. No; I don't.
532. You went there twice that spring?
Yes, sir.
438 523. How long apart were those times?
I can't tell.
534. Where is that original paper?
I don't know.
535. When did you last see it?
Ans. I don't know that. I was under the impression that it was among my papers at home. When I was in Clay county, in February or March last, I went from there home. I looked through my papers at my house and I was unable to find it. Then I thought, of

course, it was among my papers in New York, which I have not seen nor examined since nor had an opportunity to, because they were stored away.

536. When did you last see that original paper?

I don't know.

537. You don't know where it is?

No. I think it is among my papers, if it came back from record at Sioux county. I think I must have it among my
439 papers. I left it in Clay county.

538. Who was it wrote you he wanted to buy lands from that county at the time you went up there, in the spring of 1875?

Ans. Some person whose name I don't remember now. The letter was given to me by N. A. Cowdrey, 45 William St., or was sent to me there from Wm. A. Palmer, he having been agent for these lands. When I purchased these lands I agreed verbally with Mr. Cowdrey that I would carry out any transaction that had been made while I owned the lands—any contracts that might have been made by Mr. Palmer.

539. What I ask you now is whether you remember the names?

No; I don't.

540. When were you up in Sioux and Clay counties last?

Last February and March.

541. That was since the commencement of this suit?

440 542. That was since the commencement of this suit.

543. Were you not in those counties from the spring of 1875 until since the commencement of this suit?

Since? No, sir.

544. You were not there but the three times that you refer to—twice in the spring of 1875 and once since the commencement of this suit?

No, sir.

545. I want to know, Mr. Wallace, whether I understood you as to when you last saw this original contract for reconveyance.

Ans. I can't say; my impression was that I had seen it among my papers within two years, but not finding it among those at home, I can't say positively. I think it is about two or three years since I saw it among my papers, yet I wouldn't say positively that I saw it then. Thinking of it subsequently, it may have
441 been that it remained in Sioux county, but I think that I have seen it in three years among my papers the last time I went over a certain lot of my papers.

546. Did you have any copy of it?

I had no copy of it until I got it from the record up there.

547. You got a copy at the time that you went up there this last spring?

No, sir; when I got the notice of publication in New York I sent a telegram to the county clerk there to send me a copy of the complaint and the contract of record certified to, and he sent me them.

548. Who sent you that—the publication of notice of this suit?

I don't know; it was sent to me from my house in St. Louis. Who sent it there I don't know; never have known.

549. Then you sent for this copy from New York?

442 I telegraphed for a certified copy.

550. Then the original was not among your papers at New York?

The papers that I had with me in New York didn't contain it, but I had some papers that were stored away. I was sick when I got this notification; was confined to the house for eight weeks and I couldn't get those papers, so I telegraphed for a copy of that at the time of getting a copy of the other, as saving my time, thinking then it was at home. After looking through my papers at home I couldn't find it; consequently, I supposed it must be among this other lot of papers that I haven't seen.

551. You didn't look among these papers in New York for the original?

No; I haven't seen them since.

Redirect interrogatories by Mr. CRAIG:

443 552. In the purchase of these lands from Mr. Cowdrey at what rate did he take the Missouri war claims from you?

At 60c. on the dollar, the first, and the last at 50c. on the dollar.

553. You say you sold a part of these lands and took Missouri war claims for them. At what rate did you take the Missouri war claims?

45c. on the dollar.

554. When you were negotiating this transaction with Mr. Leighton he spoke of his associates in the bank?

Yes, sir.

555. When did you learn who those associates were by name—first learn?

Well, after the arrangement was made, and I think after the papers were examined by Mr. Leighton's attorney, and perhaps he might have submitted them to the gentlemen, all of them, before I knew them by name. I am not sure of that.

444 556. Did he disclose the name until he told you whom to make the deed to?

Yes; I think he did.

557. Do I understand you to say that the whole matter had been agreed upon before he did disclose the name? Is that correct?

I think that is correct.

558. What examination have you made for this original contract—option contract—among your papers that you have in St. Louis?

I have made a thorough search in my papers in St. Louis.

559. You are satisfied it is not there?

Yes, sir.

560. At the time that you got this notice of the publication of this suit did you examine among your papers then in New York, except those papers that were stored away?

Yes; I must have done so, I think, or I must have known
445 that it was not among them. I don't know which. I don't know that I looked among my papers then. I got the notice. My brother called on me. I was sick; confined to the house. I wrote a telegram and sent it right out, because I wanted a copy of the complaint. In doing so I said, "I may as well send and get a certified copy of the contract," not knowing just where the original was, although I supposed it was at my house in St. Louis. When I got there I couldn't find it.

561. Is it among your papers, unless it is among your papers that you speak of as being stored away?

In New York.

562. In what shape are they stored away?

That is a question that I can't answer. My attorney has a great many of my papers; a great many of them were in his office he left in New York when I was away from there. The papers
446 are boxed up. I heard where they were, but I never have got them, having no pressing need for them. I never have made any thorough trial to get them.

563. Will you have those papers in New York searched through?

I will endeavor to find them, if I can.

564. So as to use the original on trial?

If I can; yes, sir.

565. Is the copy that is filed in this case as Ex. "I" to Mr. Ford's deposition, and also as Ex. "A" in plaintiffs' petition in this case, a true copy of the original, as far as you recollect?

Ex. "A" in plaintiffs' petition I have no knowledge of, except in the certified copy of their papers, except that I sent to the clerk for it and he sent me this, which is Ex. "A;" that is certified to by him. Ex. "I," in Mr. Ford's testimony—I suppose that that is a correct copy.

447 Did you have this contract recorded in both Sioux *Sioux* and Clay counties?

I gave it to the recorder for record in Clay county myself, with instructions to forward it to Sioux, and to forward it to me again either in St. Louis or in New York.

567. Are you certain that you got it from the recorder?

I am not certain; I thought I was certain at the time, but I am not now certain whether I did or not. I was certain that it was among my papers, but now I don't know.

Def'ts here request pl'ffs to produce the original deed, that they may introduce it in evidence. Pl'ffs decline to do so, but consent that a certified copy of the deed from def't Wallace to pl'ffs may be attached to this deposition as a part of it. It is also agreed that if the original of the option contract can be found *that* it
448 shall be attached as an exhibit to this deposition.

Adjourned.

I, Elizabeth H. Rogers, hereby certify that the foregoing 46 pages is a true and correct transcript of the testimony given by John A.

Wallace in his cross-examination and redirect examination in the above-entitled cause, as taken down in short-hand by me.

Witness my hand this 26th day of July, A. D. 1882.

(S'g'd) ELIZABETH H. ROGERS.

(Endorsed): No. —. Equity. Edward Johnstone *et al. vs.* John A. Wallace *et al.* Depositions of E. R. Ford *et al.* Opened by order of court and filed August 21, 1882. E. R. Mason, clerk.

449 *Petition in Equity.*

Circuit Court of the United States for District of Iowa, Central Division, at Des Moines.

EDWARD JOHNSTONE, A. L. CONNABLE, C. F. DAVIS
vs.
JOHN A. WALLACE, E. R. FORD.

It is stipulated that the depositions of the witnesses, J. B. Edmunds, S. W. Dubois, and A. H. Miller, may be taken before Charles S. Penfield, a notary public at Spencer, Iowa, upon the interrogatories and cross-interrogatories hereto attached; that a notice and commission to take said depositions are hereby waived, and that said evidence taken as aforesaid may be read in evidence at the trial of said cause.

Keokuk, Iowa, July 24, 1882.

(S'g'd) CRAIG, COLLIER & CRAIG & H. C. NOYES,
Att'ys for Def't Wallace.
HAGERMAN, McCRARY & HAGERMAN,
Attorneys for Complainants.

450 *Petition in Equity.*

In Circuit of the United States, District of Iowa, Central Division, at Des Moines.

EDWARD JOHNSTONE, A. L. CONNABLE, C. F. DAVIS
vs.
JOHN A. WALLACE, E. R. FORD.

Interrogatories to be propounded to each of the witnesses, J. B. Edmunds, S. W. Dubois, and A. W. Miller.

Interrogatories to be propounded to each of the witnesses, J. B. Edmunds, S. W. Dubois, and A. W. Miller, to be read in evidence in the above-entitled cause.

1st. State your name, age, residence, and occupation.

2nd Int. State whether or not you are familiar with the value of lands situated in the counties of Sioux and Clay, State of Iowa,
451 and were you familiar with said values during the month of February, A. D. 1875; &, if you answer yea, then state what means you have had of acquiring said knowledge.

3rd Int. State whether or not you know the value of the following-described lands, to wit: Section thirty-six, township 94, range 44, situated in Sioux county, Iowa; also section ten, township 94, range 36, and section 18, township 94, range 36, containing 624 acres (the latter section being a fractional section); also west half of section 8, township 94, range 37; also north half and southeast quarter of section 13, township 94, range 37; also east half of section 17, township 94, range 37; also southwest quarter of section 35, township 94, range 37, situated in the county of Clay, Iowa—that is, do you know the value of said lands on the 17th day of February, A. D. 1875?

452 4th Int. If you answer that you do know the value of said lands on the 17th day of February, 1875, then state what said value was of the same at the date last aforesaid.

(S'g'd) CRAIG, COLLIER & CRAIG,
For J. A. Wallace.

453 In the Circuit Court of the United States, Central Division, at Des Moines.

EDWARD JOHNSTONE, A. L. CONNABLE, C. F. DAVIS
vs.
JOHN A. WALLACE and E. R. FORD.

Cross-questions to each of the following witnesses, namely, J. B. Edmunds, S. W. Dubois, and A. W. Miller.

1st. Where were you living in Feb'y, 1875, and in what business were you then engaged?

2nd. Would you now state what would have been the fair market value of said lands in February, 1875, supposing they had all been sold in a lump?

3rd. Could said lands have been sold in a lump readily in Feb'y, 1875?

4th. What was the market value of said lands sold in one
454 lot to one purchaser or set of purchasers in Feb'y, 1875?

5th. Did you buy any wild lands in Sioux or Clay county in Feb'y, 1875, in large tracts; if so, what price did you pay?

6th. In Feb'y, 1875, were there many lands for sale in large tracts throughout Sioux or Clay county or in Northern Iowa; and, if so, at what prices per acre were such lands generally sold? We mean cash sales.

(S'g'd) HAGERMAN, McCRARY & HAGERMAN,
Solicitors for Complainants.

Depositions of witnesses produced, sworn, and examined before me, Chas. S. Penfield, a notary public in and for Clay county, in the State of Iowa, at my office, in Spencer, Clay county, Iowa, in pursuance of the annexed stipulation, to be read in evidence in a certain cause now pending in the circuit court of the
455 United States for the district of Iowa, wherein Edward Johnstone, A. L. Connable, and C. F. Davis are plaintiffs and John A. Wallace and E. R. Ford are defendants, on the part of defendants.

A. W. MILLER, of lawful age, being produced, sworn, and examined on the part of defendants, testifies as follows:

Int. 1. State your name, age, occupation, and place of residence.

Ans. A. W. Miller; age, 35 years; by occupation, banker and real estate agent; residence, Spencer, Clay Co., Iowa.

Int. 2. State whether or not you are familiar with the value of lands situated in the counties of Sioux and Clay, State of Iowa, and were you familiar with said values during the month of February, A. D. 1875; and if you answer yes, then state what means you had of acquiring said knowledge.

456 Ans. I am familiar with the values of lands in Clay county, Iowa, but not in Sioux county. I was familiar with the values of land in Clay county, Iowa, but not in Sioux county, during the month of February, A. D. 1875. I acquired my knowledge of land values by being engaged in the business of buying and selling lands in Clay county, Iowa.

Int. 3. State whether or not you know the values of the following-described lands, to wit: Section thirty-six, township 94, range 44, situated in Sioux county, Iowa; also section ten, township 94, range 36, and section eighteen, township 94, range 36, containing 624 acres (the latter section being a fractional section); also west half of section 8, township 94, range 37; also north half and southeast quarter of section 13, township 94, range 37; also
457 east half of section 17, township 94, range 37; also southwest quarter of section 35, township 94, range 37, situated in the county of Clay, Iowa—that is, do you know the value of said lands on the 17th day of February, A. D. 1875?

Ans. I do not know the value of section 36, township 94, range 44, Sioux county, Iowa, either now or on February 17th, 1875. I do know the value of the rest of the land described now and its value on February 17th, 1875.

Int. 4th. If you answer that you do know the value of said lands on the 17th day of February, 1875, then state what said value was of the same at the date last aforesaid.

Ans. The value of said lands in Clay county, Iowa, was on February 17th, 1875, two and a half (2½) to three (3) dollars per acre.

Cross-Interrogatories Propounded to A. W. Miller, in Pursuance of the Annexed Stipulation.

X Int. 1. Where were you living in February, 1875, and
458 in what business were you then engaged?

Ans. I was living in Spencer, Clay Co., Iowa, and was engaged in the loan and real estate business.

X Int. 2. Would you now state what would have been the fair market value of said lands in February, 1875, supposing they had all been sold in a lump?

Ans. Two and a half ($2\frac{1}{2}$) to three (3) dollars per acre for the lands in Clay county, Iowa.

X Int. 3. Could said lands have been sold in a lump readily in February, 1875?

Ans. No; not readily.

X Int. 4. What was the market value of said lands sold in one lot to one purchaser or set of purchasers in Feb., 1875?

Ans. Two and a half ($2\frac{1}{2}$) to three (3) dollars per acre for the lands in Clay county, Iowa.

X Int. 5. Did you buy any wild lands in Sioux or Clay county in February, 1875, in large tracts; if so, what price did you pay?

459 Ans. No; I did not buy any.

X Int. 6. In Feb'y, 1875, were there many lands for sale in large tracts throughout Sioux or Clay county or in Northern Iowa; and, if so, at what price per acre were such lands generally sold? We mean cash sales.

Ans. There were, and sales were made at two (2) to three (3) dollars per acre.

(S'g'd) A. W. MILLER.

I, Chas. S. Penfield, a notary public in and for Clay county, Iowa, do hereby certify that A. W. Miller, the deponent, whose residence is Spencer, Clay county, Iowa, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined and his examination reduced to writing by me, who am neither of the parties nor at-

460 torney of either nor in anywise interested in the suit, and after being carefully by me read over to the said deponent the same was sworn to and subscribed by the said deponent in my presence on the twenty-eighth day of July, A. D. 1882, between the hours of 11 a. m. and 2 p. m. of said day, at Spencer, Clay county, Iowa.

Given and testified under my ha-d and notarial seal this 28th day of July, A. D. 1882.

[Seal C. S. Penfield, Spencer, Clay Co.]

(S'g'd) CHAS. S. PENFIELD,
Notary Public in and for Clay County, Iowa.

J. B. EDMUNDS, of lawful age, being produced, sworn, and examined on the part of the defendant, testifies as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. J. B. Edmunds; thirty-seven years of age; residence, Spencer, Clay Co., Iowa; my occupation, banker and real estate dealer.

461 Int 2. State whether or not you are familiar with the values of lands situated in the counties of Sioux and Clay, State of

Iowa, and were you familiar with said values during the month of February, A. D. 1875; and if you answer yes, then state what means you have had of acquiring said knowledge.

Ans. I am familiar with the values of lands in Clay county, Iowa, but not of lands in Sioux county. I was familiar with values of Clay county lands in February, 1875, but not of Sioux county lands. My means of acquiring said knowledge was by reason of being engaged in the real estate business, having lands for sale throughout the county of Clay, and since the year of 1870 have made it my business to inform myself as to the values of Clay county lands.

Int. 3. State whether or not you know the values of the
462 following-described lands, to wit: Section thirty-six, township 94, range 44, situated in Sioux county, Iowa; also section ten, township 94, range 36, and section 18, township 94, range 36, containing 624 acres (the latter section being a fractional section); also west half of section 8, township 94, range 37; also north half and southeast quarter of section 13, township 94, range 37; also east half of section 17, township 94, range 37; also southwest quarter of section 35, township 94, range 37, situated in the county of Clay, Iowa—that is, do you know the value of said land on the 17th day of February, 1855?

Answer. Yes; except as to lands in Sioux county, Iowa.

Int. 4. If you answer that you do know the value of said lands on the 17th day of February, 1875, then state what said value was of the same at the date aforesaid.

Ans. From two (2.00) to three (3.00) dollars per acre—that is, of the said Clay county lands.

Cross-Interrogatories Propounded to J. B. Edmunds, in Pursu-
463 *ance of the Annexed Stipulation.*

X Int. 1. Where were you living in February, 1875, and in what business were you then engaged?

Ans. I was living in Spencer, Clay Co., Iowa, and was engaged in the real estate business.

X Int. 2. Would you now state what would have been the fair market value of said lands in Feb., 1875, supposing they had all been sold in a lump?

Ans. Purchasers for Clay county lands at that time were few and far between. I think they might have been sold at a dollar and a half an acre. Referring to said Clay county lands, I don't think they could have been sold for any more than that.

X Int. 3. Could said lands have been sold in a lump readily in Feb'y, 1875?

Ans. The Clay county lands could not.

X Int. 4. What was the market value of said lands sold in
464 one lot to one purchaser or set of purchasers in Feb'y, 1875?

Ans. Not to exceed a dollar and a half an acre—meaning said Clay county lands.

X Int. 5. Did you buy any wild lands in Sioux or Clay county in Feb'y, 1875, in large tracts; if so, what price did you pay?

Ans. I bought all the lands in Clay county that I wanted for the delinquent taxes, and didn't buy any large tracts.

X Int. 6. In Feb'y, 1875, were there many lands for sale in large tracts throughout Sioux or Clay county or in Northern Iowa; and, if so, at what prices per acre were such lands generally sold? We mean cash sales.

Ans. There was at that time a good deal of land for sale in large tracts. I don't remember of any being sold at or about that time for cash. In June, 1876, a large tract in Clay county sold for two dollars an acre cash.

(S'g'd) J. B. EDMUNDS.

465 I, Chas. S. Penfield, a notary public in and for Clay county, Iowa, do hereby certify that J. B. Edmunds, the deponent, whose residence is Spencer, Clay county, Iowa, was by me sworn to testify the whole truth of his knowledge touching the matter in controversy in the cause aforesaid; that deponent was examined and his examination reduced to writing by me, who am neither of the parties nor attorney of either nor in anywise interested in the suit, and after being carefully by me read over to said deponent the same was sworn to and subscribed by the said deponent in my presence on the twenty-eighth day of July, A. D. 1882, between the hours of 1 p. m. and 9 p. m. of said day, at Spencer, Clay county, Iowa.

Given and certified under my hand and notarial seal this
466 28th day of July, A. D. 1882.

[Seal C. S. Penfield, Iowa.]

(S'g'd) CHAS. S. PENFIELD,
Notary Public in and for Clay County, Iowa.

THE STATE OF IOWA, }
Clay County, } *ss:*

I, Chas. S. Penfield, a notary public in and for Clay county, Iowa, do hereby certify that, in pursuance of the annexed stipulation, came before me at my office, in Spencer, Clay county, Iowa, A. W. Miller and J. B. Edmunds, who were then by me sworn and examined and such examination reduced to writing by myself, who am neither of the parties, their attorney, nor in anywise interested in the event of the suit, and not in the presence of either of the parties or their attorney or attorneys, and after being by me read over to
467 each of said deponents the same was sworn to and subscribed to by said witnesses, respectively, in my presence, and their depositions are now herewith returned.

Given under my hand and notarial seal at Spencer, Clay county, Iowa, this twenty-eighth day of July, A. D. 1882.

[Seal C. S. Penfield, Iowa.]

(S'g'd) CHAS. S. PENFIELD,
Notary Public in and for Clay County, Iowa.

Fees	4 00
Witness fees	2 50
Clerk's fees	50
	$7 00

Paid by def't, J. A. Wallace.

STATE OF IOWA, } ss:
Clay County, }

I, H. Chamberlain, clerk of the district court of the county and State aforesaid, do hereby certify that Chas. S. Penfield is a notary public, duly commissioned and qualified; that his commission
468 was dated on the 4th day of July, 1882, and will expire on the 4 day of July, 1885, and that his signature annexed to the foregoing instrument is genuine.

Given under my hand and the seal of said court this 28 day of July, 1882.

[SEAL.] (S'g'd) H. CHAMBERLAIN, *Clerk.*

(Endorsed:) No. —. Edward Johnstone *et al. vs.* John A. Wallace *et al.* Depositions of A. W. Miller *et al.* Opened by order of court and filed Aug. 21, 1882. E. R. Mason, clerk.

469 United States Circuit Court, Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of said court for said district, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries in a certain cause in said court, wherein Edward Johnstone *et al.* were complainants and John A. Wallace *et al.* were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at my office, in the city of Des Moines, in said district, this 13th day of August, 1884.

[Seal U. S. Circuit Court, Southern District Iowa.]

E. R. MASON,
Clerk U. S. Circuit Court, Southern Dist. of Iowa.

470 *Additional Transcript of Record to United States Supreme Court.*

United States Circuit Court, Southern District of Iowa, Central Division.

EDWARD JOHNSTONE *et al.* }
vs. } Eq. No. 1926.
JOHN A. WALLACE *et al.* }

471 Pleas in the circuit court of the United States for the southern district of Iowa, central division, at a term of the

same begun and held at the United States court-house, in the city of Des Moines, in said district, on the 12th day of May, 1885, it being the second Tuesday in May, 1885, before the Honorable Samuel F. Miller, David J. Brewer, & J. M. Love, judges.

Attest: E. R. MASON, *Clerk.*

472 Be it remembered that heretofore, to wit, on the 13th day of January, 1885, the complainants, Edward Johnstone *et al.*, by McCrary and Hagerman, their solicitors, filed in the clerk's office of the United States for the southern district of Iowa, central division, a motion to file and enter the mandate of the Supreme Court of the United States in a certain cause wherein Edward Johnstone *et al.* were complainants and John A. Wallace *et al.* were defendants; which said motion is in the words and figures following, to wit:

473 In the United — Circuit Court, Southern District of Iowa, Central Division. In Equity.

EDWARD JOHNSTONE *et al. vs.* JOHN A. WALLACE *et al.*

Now come complainants and present to the court the mandate of the Supreme Court of the United States and ask that same be filed and entered of record as by law and rules of court required.

(Signed) McCRARY AND HAGERMAN,
Solicitors for Comp'ts.

Endorsed: 1926. Eq. Johnstone *et al. vs.* Wallace *et al.* Motion to file and enter mandate — Supreme Court. Filed Jan. 13, 1885. E. R. Mason, clerk.

474 And on the 13th day of January, 1885, it being of the October term, 1884, in the record of the proceedings in said court is an entry in said cause in the words and figures following, to wit:

475 United States Circuit Court, Southern District of Iowa, Central Division. October Term, 1884.

EDWARD JOHNSTONE *et al.*
vs.
JOHN A. WALLACE *et al.* } Equity, No. 1926.

TUESDAY, *Jan'y 13th*, 1885.

This day comes the complainants, by McCrary & Hagerman, their solicitors, and file the mandate of the Supreme Court of the United States herein in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the [SEAL.] southern district of Iowa, Greeting:

Whereas lately in the circuit court of the United States for the southern district of Iowa, before you or some of you, in a cause

between Edward Johnstone, A. L. Connable, and C. F. Davis,
476 complainants, and John A. Wallace and E. R. Ford, defendants (in original bill), and John A. Wallace, complainant, and Edward Johnstone, A. L. Connable, and C. F. Davis, defendants (in cross-bill), equity No. 1926, wherein the decree of the said circuit court, entered in said cause on the 16th day of May, A. D. 1883, was in favor of the said Edward Johnstone, A. L. Connable, and C. F. Davis and against the said John A. Wallace—

Whereupon the said John A. Wallace prayed an appeal to the Supreme Court of the United States, as by the inspection of the certificate of the clerk of the said circuit court, under the seal of the said circuit court, which was brought into the Supreme Court of the United States, agreeably to the act of Congress and the rules of the said Supreme Court, in such case made and provided, fully and at large, appears;

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and eighty-four, the said cause came on to be heard before the said Supreme Court, and it
477 appearing that the appellant has failed to have his cause filed and docketed in conformity with the rules of this court: It is now here ordered, adjudged, and decreed by this court that this appeal from the circuit court of the United States for the southern district of Iowa be, and the same is hereby, docketed and dismissed with costs, and that the said Edward Johnstone, A. L. Connable, and C. F. Davis recover against the said John A. Wallace thirty-two dollars and fifty-five cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court.

12th November, 1884.

You therefore are hereby commanded that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

478 Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the fifteenth day of December, in the year of our Lord one thousand eight hundred and eighty-four.

Costs of Edward Johnstone *et al.*:

Clerk	12 55
Att'y	20 00
	32 55

Taxed by—

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Filed Dec. 23, 1884.

E. R. MASON, *Clerk.*

Thereupon it is considered, ordered, and adjudged that the said complainants, Edward Johnstone, A. L. Connable, and C. F. Davis, do have and recover of and from the defendant, John A. Wallace, the costs herein, including the costs in the Supreme Court of the United States, taxed at $——, and that execution issue therefor. It is further ordered that the supersedeas heretofore filed herein be, and the same is hereby, set aside.

479 And on the 12th day of May, 1885, the defendant, John A. Wallace, filed in said cause his petition for the allowance of an appeal to the Supreme Court of the United States; which said petition is in the words and figures following, to wit:

480 *Petition of Appeal.*

Circuit Court of the United States, Southern District, Central Division, Iowa, in the Eighth Circuit.

EDWARD JOHNSTONE, C. F. DAVIS, and A. L. CONABLE, Complainants and Appellees,
against
JOHN A. WALLACE, Respondent and Appellant.

To the honorable the Supreme Court of the United States:

The appeal of John A. Wallace, the above-named respondent and appellant, respectfully showeth—

I. That on or about the 13th day of January, 1882, the above-named complainants and appellees filed their petition in equity in the circuit court of Clay county, in the State of Iowa, for the February term, 1882, for the purpose of quieting the title to certain lands situate in the counties of Clay and Sioux, State of Iowa; and the allegations of the petition are as follows:

II. That on February 17th, 1875, John A. Wallace, the
481 respondent and appellant, was the owner in fee of certain lands situate and being in the counties of Clay and Sioux, in the State of Iowa, and that on said day said Wallace conveyed the same lands by deed with general warranty for a valuable consideration to Edward Johnstone, C. F. Davis, A. L. Conable, and William Leighton, and that said deeds were duly recorded.

III. That on the said 17th day of February, 1875, Edward Johnstone, C. F. Davis, A. L. Conable, complainants and appellees, and William Leighton executed and delivered to E. R. Ford or his assigns a contract whereby they gave to the respondent, E. R. Ford, or his assigns the option of purchasing the same lands for sixty days from February 17th, 1875, upon the condition that E. R. Ford or his assigns cause to be deposited to the credit of Edward Johnstone, C. F. Davis, A. L. Conable, and William Leighton in the Keokuk Savings Bank of Keokuk, Iowa, the sum of fifty-eight hundred and seventy-six dollars within sixty days from date, and,
upon such deposit being made, the said Johnstone, Davis,
482 Conable, and Leighton would convey, by warranty deeds, the same land to E. R. Ford or his assigns.

IV. That the said Ford assigned, on the — day of February, 1875, this agreement to John A. Wallace, the respondent and appellant, for a valuable consideration.

V. That on August 5th, 1875, the said William Leighton conveyed his undivided one-fourth interest to C. F. Davis, one of the complainants and appellees.

VI. That on August 6th, 1875, the said C. F. Davis conveyed one-half of the interest of the said Leighton to the said Edward Johnstone, and that neither the respondent Ford or his assignee, the respondent and appellant, John A. Wallace, ever deposited in the Keokuk Savings Bank of Keokuk, Iowa, according to the terms of the agreement, and therefore the complainants believe that their rights thereunder are forfeited.

VII. The complainants pray that the said contract of February 17th, 1885, be declared forfeited and cancelled, and the title of said complainants to said lands be quieted against all
483 claims of the respondents Ford and Wallace.

VIII. That on February 28th, 1882, the respondent and appellant, John A. Wallace, filed his answer in the clerk's office of the circuit court of Clay county, Iowa, wherein he admits that he was the owner in fee of certain lands in Clay and Sioux counties, Iowa, on February 17th, 1875; also that he made what purported to be deeds of the same on that day to Edward Johnstone, C. F. Davis, A. L. Conable, complainants and appellees herein, and one William Leighton, with a clause of general warranty, for a valuable consideration.

IX. That the complainants herein, together with one William Leighton, signed the contract on option on February 17th, 1875, which contract or option was indorsed by Ford and delivered to respondent, John A. Wallace, at the same time of the signing and delivering of the deeds by Wallace to the complainants and Leighton, and that he denies every other allegation of the petition.

X. That it was agreed finally that Johnstone, Davis, and
484 Conable, complainants and appellees herein, and one Leighton should loan about $4,250.00 in cash to the respondent and appellant, John A. Wallace, and that said Wallace should repay to them $5,800.00 within sixty days from February 17th, 1875, and that in order to avoid the usury laws of the State of Iowa this method of security was adopted. Said Wallace granted by deed to Johnstone, Davis, Conable, and Leighton by general warranty the lands mentioned in the petition. Then Johnstone, Davis, Conable, and Leighton made a contract or option with said Wallace to convey within sixty days the same lands, provided $5,800.00 cash was deposited with the Keokuk Savings Bank of Keokuk, Iowa, to the credit of the grantees.

XI. That said deeds were given as security for the payment of $5,800.00 within sixty days from February 17th, 1875, which payment was not made; wherefore the said John A. Wallace prays that the deeds be declared mortgages and that the title to
485 said real estate be decreed to be in the said John A. Wallace,

subject to whatever lien the grantees may have, and that said John A. Wallace may have the right to redeem said lands.

XII. That on March the 4th, 1882, the complainants filed a reply to the answer of respondent and appellant, John A. Wallace, in which they deny each and every allegation in said answer which in any way modifies the allegations of the petition.

XIII. That on or about March 13th, 1882, the complainants filed in the clerk's office of the circuit court of Clay county, Iowa, a petition for removal of the cause of action to the United States circuit court for the district of Iowa, central division, at Des Moines, which petition was granted and the cause removed, and on April 18th, 1882, Messrs. Hagerman, McCrary & Hagerman filed a præcipe for appearance for the complainants in the clerk's office of the United States circuit court, district of Iowa.

XIV. That on May 13th, 1883, the cross-complainant, John
486 A. Wallace, filed his cross-bill with the clerk of the United States circuit court, southern district of Iowa, western division, in which it is alleged that the deeds by Wallace to the complainants and one Leighton, together with the contract made by complainants and one Leighton to Ford and assigned to Wallace, make and constitute one transaction, and that as a matter of fact Ford was the agent of Wallace.

XV. That said deeds were executed as security for the repayment of $5,800.00 to the complainants and one William Leighton within sixty days from February 17th, 1875, and that since that time the said Edward Johnstone, C. F. Davis, and A. L. Conable have sold and conveyed large tracts of said lands, and that the money received from the grantees is largely in excess of the money paid to the said John A. Wallace by the cross-respondent and one Leighton, and that they refuse to apply the same as payment of the money borrowed by said Wallace, and also refuse to reconvey to the cross-complainant, John A. Wallace, the lands unsold and still held by them.

487 XVI. That on May 13th, 1883, the defendants, Edward Johnstone, C. F. Davis, and A. L. Conable, filed their answer to the cross-bill of John A. Wallace and admitted the citizenship of the parties as alleged and deny each and every allegation of said cross-bill not hereinafter admitted.

XVII. They make the same allegations as are in the original bill as to the ownership of the lands on February 17th, 1875; also as to the conveyance on that day to the cross-complainants and one Leighton; also as to the contract made by Ford and these complainants and one Leighton, but that no assignment was made by Ford to Wallace until after the transaction hereinbefore set forth, and that neither said Ford or his assignee ever paid or offered to deposit the money as required by the option contract, and that said transaction did not constitute a mortgage, and that the cross-respondents with William Leighton took possession of the lands and have so retained possession, except that William Leighton trans-
488 ferred his fourth interest to C. F. Davis by deed on August 5th, 1875, and that on August 6th, 1875, said Davis, by deed,

duly conveyed to Edward Johnstone one-half of the interest so conveyed by Leighton to Davis, and that both Davis and Johnstone purchased said interest without any notice of equities that would convert the transactions of February 17th, 1875, into a mortgage; also that they paid the taxes to the amount of $2,568.54 *dollars* in good faith, and that cross-complainant should be estopped from claiming the matters set up by him in his cross-bill on the ground of laches, which should debar him from relief.

XVIII. That subsequently, and after reading the pleadings and hearing the proofs adduced by complainants and respondents, and on May 16th, 1883, the court granted the prayer of the complainants and appellees, and entered a final decree dismissing the cross-bill, and quieted the title to the lands in question by maintaining the prayer of the complainants in the original bill.

489 XIX. That John A. Wallace, the respondent and appellant, at the same time duly excepted to all such rulings and findings and decree, and prayed an appeal in open court of this cause to the Supreme Court of the United States, which was granted and the appeal allowed by the circuit judge, and the appeal bond was filed at (500.00) five hundred dollars, and the bond was given and approved by the court July 16th, 1883.

XX. That the appeal was dismissed by the Supreme Court of the United States on or about December 15th, 1884, which was in the October term, 1884, for the reason that the certified copy of the record had not been filed in the clerk's office of the Supreme Court of the United States at the term for which the appeal was taken, which was the October term, 1883, and that a mandate was signed by the Supreme Court of U. S. on the 15th day of December, 1884, and which mandate sent the case back to the circuit court of the United States for the eighth circuit, southern district, eastern divis-

490 ion, State of Iowa.

XXI. That the failure of petitioner to file a certified copy of the record was a lack of knowledge of the rules of the Supreme Court of the United States, and that under section 1008 of the Revised Statutes of the United States an appellant is allowed two years to take an appeal to the Supreme Court of the United States from the date of the entry of the final decree, which in this case was entered May 16th, 1883.

XXII. That John A. Wallace, appellant, is advised and believes that the said final decree is erroneous, and that upon the pleadings and proofs in this cause this appellant, John A. Wallace, is entitled to a decree dismissing the original bill of complaint with costs, and granting the prayers of the cross-bill.

Wherefore this appellant appeals from the whole of the said final decree of the circuit court of the United States of May 16th, 1883, and from each and every part thereof, to the Supreme Court

491 of the United States, and prays that the decree of the said circuit court and the bill, cross-bill, answers, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the

said Supreme Court will hear the said cause anew and reverse said decree and every part thereof.

(Signed) JOHN A. WALLACE.

STATE OF NEW YORK, }
County of New York, } *ss:*

—, John A. Wallace, the petitioner above named, being duly sworn, do*th* depose and say that I have read the foregoing petition and know the contents thereof, and that the same are true to the best of my knowledge and belief.

(Signed) JOHN A. WALLACE.

Sworn to before me this 27th day of March, 1885.

[SEAL.] (Signed) ROB'T P. GETTY, JR.,
Notary Public, Westchester Co.

(Cert. in N. Y. Co.)

492 STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Patrick Keenan, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Rob't P. Getty, Jr., has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Westchester, with his autograph signature, and was at the time of taking the annexed deposition duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public, and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 30 day of Ap'l, 1885.

[SEAL.] (Signed) PATRICK KEENAN, *Clerk.*

493 Endorsed: Circuit court of the United States, southern district, eastern division, of Iowa. Edward Johnstone, C. F. Davis, and A. L. Conable, complainants and appellees, against John A. Wallace, respondent and appellant. Original petition of appeal. Filed May 12th, 1885. (Signed) Ed. R. Mason, clerk.

494 And on the 12th day of May, 1885, the defendant, John A. Wallace, filed an appeal bond in said cause in the words and figures following, to wit:

495 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District, Central Division, of Iowa, in the Eighth Circuit.

EDWARD JOHNSTONE, C. F. DAVIS, and A. L. CONABLE, Complainants and Appellees,

vs.

JOHN A. WALLACE, E. R. FORD, Respondents and Appellants.

Know all men by these presents that we, John A. Wallace and J.

H. Windsor, of Des Moines, Iowa, are held and firmly bound unto the above-named Edward Johnstone, C. F. Davis, and A. L. Conable in the sum of five hundred dollars, to be paid to the said Edward Johnstone, C. F. Davis, and A. L. Conable; for the payment of which, well and truly — be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 11th day of May, in
496 the year of our Lord one thousand eight hundred and eighty-five.

Whereas the above-named John A. Wallace has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judges of the circuit court of the United States for the southern district, central division, of Iowa:

Now, therefore, the condition of this obligation is such that if the above-named John A. Wallace shall prosecute his appeal to effect and answer all damages and costs if he shall make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) J. H. WINDSOR.

Sealed and delivered and taken and acknowledged this 11th day of May, 1885, before me—

(Signed) E. R. MASON,
Clerk U. S. Cir. Court, S. Dist. of Iowa.

UNITED STATES OF AMERICA, *Southern District of Iowa:*

497 I hereby certify that the foregoing surety, J. H. Windsor, is personally well known to me to be worth more than double the foregoing bond, exclusive of property exempt from execution.

(Signed) E. R. MASON,
Clerk U. S. C. Court, S. Dist. of Iowa

Endorsed: U. S. circuit court, southern district, eastern division, of Iowa. Edward Johnstone, C. F. Davis, and A. L. Conable, complainants & appellees, against John A. Wallace, E. R. Ford, respondents & appellants. Bond for costs on appeal. Filed May 12, 1885. (Signed) Ed. R. Mason, clerk.

498 And on the 12th day of May, 1885, it being of the May term, 1885, of said court, in the record of the proceedings thereof is an entry in said cause in the words and figures following, to wit:

499 United States Circuit Court, Southern District of Iowa, Central Division. May Term, 1885.

EDWARD JOHNSTONE *et al.*
vs.
JOHN A. WALLACE *et al.*
} Eq. No. 1926.

TUESDAY, *May* 12, 1885.

This cause came on this day for hearing upon the petition of defendant and cross-complainant, John A. Wallace, for an allowance of appeal to the Supreme Court of the United States. Defendant appears by John C. Polly, Esq., and, the court being fully advised in the premises, it is ordered that said appeal be and the same is allowed as prayed in said petition, and the appeal bond in the penal sum of five hundred dollars is approved and the citation signed in open court.

500 And on the 22nd day of June, 1885, the original citation was filed in said cause in the words and figures following, to wit:

501 UNITED STATES OF AMERICA, *ss:*

To Edward Johnstone, C. F. Davis, and A. L. Conable, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and eighty-five, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district, eastern division, of Iowa, wherein John A. Wallace is appellant and you are appellees, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated May 12, 1885.

SAM. F. MILLER,
Circuit Justice.

502 [Endorsed:] U. S. Supreme Court. John A. Wallace, appellant, against Edward Johnstone, C. F. Davis, and A. L. Conable, appellees. Citation. Filed Jun. 22, 1885. Ed. R. Mason, clerk.

This writ came into my hands for service May 12th, 1885, and I served it May 15th, 1885, at Keokuk, Iowa, on Edward Johnstone and C. F. Davis, and on June 16th, 1885, I served it on A. L. Conable at Keokuk, Iowa, by reading it to each of them and delivering a true copy to each one of them.

R. ROOT, *U. S. Marshal,*
By S. S. ETHRIDGE, *Deputy.*

Fees, $16.50, paid by Jno. C. Polly, att'y, &c.

503 And on the — day of June, 1885, an affidavit of John D. Jordan was filed in said cause; which said affidavit is in the words and figures following, to wit:

504 UNITED STATES OF AMERICA, *Southern District of Iowa,* } *ss:*

United States Circuit Court, Southern District of Iowa, Central Division.

EDWARD JOHNSTONE *et al.* *vs.* JOHN A. WALLACE *et al.* } Eq. No. 1926.

I, John D. Jordan, of lawful age, being first duly sworn, do depose and say that on the 16th day of May, 1885, I posted in a conspicuous place in the clerk's office of the United States circuit court for the southern district of Iowa, at the city of Des Moines, three several copies of the petition of John A. Wallace for the allowance of an appeal to the Supreme Court of the United States, addressed to Edward Johnstone, A. L. Connable, and C. F. Davis, respectively.

And further affiant saith not.

(Signed) JOHN D. JORDAN.

Subscribed and sworn to before me by the said John D. Jordan this 23rd day of June, 1885.

[SEAL.] (Signed) E. R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

(Endorsed:) Filed June 23, 1885. E. R. Mason, clerk.

505 United States Circuit Court, Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of said court, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries since the former transcript of record was prepared in a certain cause in said court, wherein Edward Johnstone *et al.* were complainants and John A. Wallace *et al.* were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with return of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Des Moines, in said district, this 23rd day of June, A. D. 1885.

[Seal U. S. Circuit Court, Southern District, Iowa.]

EDWARD R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

Endorsed on cover: S. Iowa C. C. U. S. No. 94. John A. Wallace, appellant, *vs.* Edward Johnstone, A. L. Connable, and C. F. Davis. Filed October 10, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 94.

JOHN H. WALLACE,

Appellant,

vs.

EDWARD JOHNSTONE, A. L. CONNABLE and C. F. DAVIS,

Appellees.

BRIEF FOR APPELLANT.

GEORGE NORRIS,
Of Counsel.

Supreme Court of the United States,

JOHN A. WALLACE,
Appellant,

vs.

EDWARD JOHNSTONE, A. L. CONNABLE and C. F. DAVIS,
Appellees.

October Term, 1888
No. 94.

Brief for Appellant.

STATEMENT OF THE CASE.

This is an appeal from the decree of the Circuit Court of the United States, for the Southern District of Iowa, sustaining the petition of the appellees, and dismissing the cross bill of the appellant.

The allegations as averred in the original petition in equity, are as follows: pp. 7, 8 and 9 R. which was filed in the Circuit Court of Clay county, Iowa, February Term, 1882.

1st. That on the 17th day of February, 1875, John A. Wallace was the owner in fee of the following described real estate being in the State of Iowa.

Sec. 36, T. 94, R. 44, Sioux County, 640 acres.
Sec. 10, T. 94, R. 36, 640 acres.
Sec. 18, T. 94, R. 36, 624 acres.
N. $\frac{1}{2}$ Sec. 8 T. 94, R. 37, 320 acres.
N. $\frac{1}{2}$ and S. E. $\frac{1}{4}$ Sec. 13, T. 94, R. 37, 480 acres.
E. $\frac{1}{2}$ Sec. 17 T. 94 R 37, 320 acres.
S. W. $\frac{1}{4}$ Sec. 35, T. 94, R. 37, 160 acres in the County of Clay,

2d. That on the 17th day of February, 1875, John A. Wallace, for a valuable consideration, conveyed the above described lands, by deeds of general warranty, to Edward Johnstone, A. L. Connable, C. F. Davis and William Leighton, which deeds were duly recorded in the counties of Sioux and Clay, State of Iowa.

3d. That on the 17th day of February, 1875, the grantees above described, executed and delivered to a co-defendant, E. R. Ford, an option contract in writing, which is hereto annexed and marked Exhibit "A," p. 9 R., wherein they gave E. R. Ford or his assigns, the option of purchasing the same lands above described, for the period of sixty days from February 17th, 1875, and conditioned that E. R. Ford, or his assigns, should deposit to the credit of the grantees within sixty days, the sum of $5,876 or pay to them the same amount within that time. Then the grantees would convey by deeds of general warranty to E. R. Ford, or his assigns, the lands above described.

4th. That the option contract was duly acknowledged, and has been recorded in the counties of Sioux and Clay, Iowa..

5th. That E. R. Ford on the day of February, 1875, assigned in writing, the option contract to John A. Wallace.

See Exhibit "A," p. 10 R.

6th. That on Aug. 5th, 1875, William Leighton conveyed to C. F. Davis.a plaintiff herein, by deeds of general warranty, his undivided fourth interest in the above described lands.

7th. That on Aug. 6th, 1875, C. F. Davis, conveyed to Edward Johnstone, a plaintiff herein, by deeds of general warranty, one-half of the Leighton interest, being a one-eighth interest in the Wallace purchase.

8th. That neither defendant E. R. Ford, or his assignee, the defendant John A. Wallace, have exercised, within the sixty days, or since, the option of purchasing the lands, and therefore the rights given by the option contract are forfeited.

9th. That the plaintiffs upon the purchase of the lands from John A. Wallace, assumed control of the same, and have paid taxes upon them, and that neither Ford or Wallace have paid any taxes or attempted since to assume control of the same.

The petitioners pray that the option contract be declared forfeited and cancelled.

That the title of the plaintiffs to the lands be quieted against all claims of the defendants.

The answer of John A. Wallace filed in the Circuit Court of Clay County, Iowa, pp. 4, 5, 6 and 7, R.

1st. John A. Wallace denies every allegation of the petition not herein admitted.

2d. The defendant admits the allegations of the first count of the petition.

3d. The defendant admits that on February 17th, 1875, he executed an instrument, which, upon its face, purports to be a deed of general warranty, to the plaintiffs, and one William Leighton, which conveys the lands described in the petition.

4th, 5th and 6th. Defendant, prior to the year 1873, for ten years, was a resident of Keokuk, Iowa, and that in the year 1873 he removed to St. Louis, Mo., and that he engaged in the real estate business and that in the winter of 1874 and 1875 he became the owner of the lands described in the petition.

7th and 8th. That the lands were worth, on February 17th, 1875, not less than $20,000.

9th and 10th. That E. R. Ford, the defendant herein was at that time a money broker, and that defendant paid the expenses of Ford from St. Louis, Mo., to Keokuk, Iowa, and also came with him about a week prior to February 17th, 1875.

11th, 12th and 13th. That E. R. Ford introduced this defendant to the plaintiffs who would loan him money upon the lands, but they were not satisfied with ten per cent. interest, and it was agreed that defendant should convey the title to the lands described in the petition, and take back an option contract of repurchase in sixty days.

14th and 15th. That it was not the intention of this defendant, to part permanently with the title to the real estate, and that the plaintiffs and one, William Leighton knew the same to be the fact.

16th, 17th, 18th, 19th, 20th, 21st and 22d. That the option contract mentioned in the third count of the petition is the paper, by which this defendant was to have a reconveyance in sixty days from February 17th, 1875.

That the option contract was assigned to this defendant, and that the plaintiffs and one, William Leighton, well knew that fact, which was so made to avoid the usury laws of the State of Iowa. That the option contract was executed and delivered at the same time of the delivery of the deeds, and together form one transaction.

That Ford acted as the agent of this defendant, which the plaintiffs and one, William Leighton, well knew.

That the defendant obtained the loan in good faith, and needed money so badly that he was willing to bind himself to pay $5,800 for $4,250 with its use for sixty days, for he belived that he could sell

the lands, pay the loans and have a large surplus left to himself.

23d, 24th and 25th. That the deed was given as security for $5,800, which he agreed to pay for the loan of $4,250, and the defendant calls upon the plaintiffs for strict proof of the actual amount received by this defendant.

That the defendant now pleads the usury law of the State of Iowa.

This defendant prays that the deeds be declared a mortgage.

That the title to the real estate be declared to be in the defendant.

That defendant may have the right to redeem upon the mortgage by the payment of the liens on the lands.

The reply of the plaintiffs in the Circuit Court of Clay County, Iowa, p. 4 R.

1st. They deny every allegation of the answer which conflicts with the allegations of the petition.

2d. They deny the loan, also the taking of usurious interest.

3d. They allege that the only transaction they ever had with the defendant Wallace was the purchase of the lands and the payment of $4,870.

The petition of removal to the Circuit Court of the United States for the Southern District of

Iowa ; filed by the plaintiffs, pp. 2 and 3 R., and approved March 4th, 1882, p. 3 R.

A stipulation signed by the solictors for the complainants and the respondent, John A. Wallace, p. 23, R. Filed May 21st, 1883, as of May 13th, 1883. The final decree was entered May 16th, 1883, pp. 23, 24 and 25, R.

No order of the Court appears of record allowing any process or pleadings to be filed under the stipulation, but they were filed by the solicitors without the consent or order of the Court, and apparently after the final decree had been entered.

I.—A second replication of the plaintiffs to the answer of John A. Wallace, filed in the Circuit Court of the United States, Southern District of Iowa, pp. 15 and 16 R.

Filed May 21st, 1883, as of May 13th, 1883.

II.—The cross-bill of John A. Wallace, pp. 16, 17 and 18 R.

Filed May 21st, 1883, as of May 13th, 1883.

III.—The answer thereto pp. 19 and 20 R.

Filed May 21st, 1883, as of May 13th, 1883.

IV.—The replication of John A. Wallace to the answer of plaintiffs to his cross-bill, p. 21 R.

Filed May 16th, 1883.

All the issues are raised by the original petition —answer and reply—filed in the Circuit Court of

of Clay County, Iowa. No evidence was taken after the 21st day of May, 1883, because that was after the final decrce had been entered.

There was a motion made by the solicitors for the appellees to strike out certain portions of the testimony given by witnesses called for the appellant, p. 22 R.

This motion was filed May 16th, 1883, the same day that the decree was made. Decree entered May 16th, 1883, p. 23 R., folio 85.

No decision or ruling of the Court appears of record upon that motion. During the taking of the testimony of both sides, a large number of motions were made to strike out testimony and objections taken, but in no case is there any decision of record or ruling by the Court upon any objections or motions.

It is quite probable that when the solicitors for the appellees ascertained how the case had been decided May 16th, 1883, that they did not press the motion to a decision. William Leighton, one of the grantees in the deeds, also a signer of the option contract, died prior to the bringing of this suit.

So it seems we have all the evidence of all the witnesses on both sides, before this Court for final review.

This is a second appeal in this case.

The decree was entered May 16th, 1883.

See pp. 23, 24 and 25 R.

Appeal allowed the same day.

The appeal Bond was filed on July 16th, 1883.

See p. 25, folio 90, R.

Th e first appeal was dismissed by the Court, because it appeared that the appellant had failed to have his cause filed and docketed in conformity with the rules of this Court.

See mandate of this Court, pp. 136 and 137 R.

By this mandate this cause was remanded to the Circuit Court of the United States for the Southern District of Iowa.

That on January 13th, 1885, the mandate was filed in the Clerk's office of the Circuit Court of the United States for the Southern District of Iowa, p. 136 R., folio 473.

That on May 12th, 1885, the defendant, John A. Wallace, filed a petition for the allowance of an appeal to the Supreme Court of the United States, pp. 138, 139. 140, 141 and 142 R.

The bond on appeal filed on the same day, pp. 142 and 143 R.

The appeal was allowed by Mr. Justice Miller, the bond approved and the citation signed on May 12, 1884; p. 144 R.

The certificate of the U. S. Marshal that the citation was served by him on Edward Johnstone

and C. F. Davis on May 15th, 1885, and A. L. Connable, June 16th, 1885; p. 144 R., folio 502.

The decree was entered May 16th, 1883, and the two years allowed to take an appeal had not expired when this appeal was allowed, May 12th, 1885.

Assignment of Errors.

I.—That the Court erred in holding that the option contract with the deeds from the appellant to appellees and William Leighton, did not constitute a mortgage.

II.—That the Court erred in holding that upon the failure of Ford and Wallace to pay as provided in said option contract, then all their rights in the lands were forfeited, and that the contract is hereby annulled and cancelled.

III.—That the Court erred in holding that appellees Johnstone, Davis and Connable are the owners of the lands in controversy, and that neither Ford nor Wallace have any interest therein, and that the title to the lands is forever quieted in the appellees.

IV.—That the Court erred in dismissing the cross bill of appellant Wallace.

See final decree, pp. 23, 24 and 25 R.

BRIEF.

Point I.

"A deed, absolute upon its face, but intended as a security for the payment of money, is a mortgage, even at law, if accompanied by a separate contemporaneous agreement in writing to reconvey, upon the payment of the debt."

Teal *vs.* Walker, 111 U. S., 242.
Nugent *vs.* Riley, 1 Met. 117.
Wilson *vs.* Shoenberger, 31 Pa. St., 295.
Dow *vs.* Chamberlin, 5 McLean, 281.
Bailey *vs.* Bailey, 5 Gray, 505.
Lane *vs.* Shears, 1 Wend, 433.
Friedley *vs.* Hamilton, 17 S. & R., 70.
Shaw *vs.* Erskine, 43 Me., 371.

(*a.*) The deeds Exhibits I and II, pp. 45 and 46 R., are absolute upon their faces.

(*b.*) Were they intended as a security for the payment of money?

(*c.*) Are they accompanied by a separate contemporaneous agreement to reconvey, upon the payment of the debt?

Point II.

A Court of Equity will treat a deed, absolute in form, as a mortgage, when executed as a security for a loan of money.

Peugh *vs.* Davis, 96 U. S., 332.
Russell *vs.* Southard, 12 How, 139.
Shillaber *vs*, Robinson, 97 U. S., 68.

As to the question were they intended as security for payment of money?

Edward Johnstone, an appellee, p. 28 R., folio 102, says:

"Dr. Ford seemed to be anxious to get an
" option to *repurchase* these lands provided
" we gave him sixty days time * * *
" he agreed to pay $5,876.00 in the Keokuk
" Savings Bank.
" *That offer had more effect upon me than*
" *anything else, and determined me to make*
" *the purchase.*"

Johnstone did not examine the lands, but he determined when he got an offer to "repurchase" that same land in sixty days, whereby he and his associates would make $1,000 clear profit, to make the purchase.

Maj. W. B. Collins, who was the attorney for Col. Leighton and Edward Johnstone in this transaction (pp. 57 and 58 R., fols. 208, 209, 210 and 211.

"After Mr. Wallace had been there on that

"day and they had talked over the sale and "purchase of that land * * * * *Mr.* "*Leighton consulted me upon the effect of* "*giving an option for the purchase of these* "*lands to Mr. Ford and desired it in such* "*a way that it would be unnecessary to* "*foreclose the option contract and that Mr.* "*Ford should not have the right of redemp-* "*tion and other rights that pertain to a* "*mortgage in our State.*

"I told him specially what I thought "should be done, and *gave him the general* "*form of the contract that should be used,* "*went to my drawer and took out a printed* "*form of contract, made interlineations and* "*erasures so as to cover this particular* "*case.*"

"Suggested that this should be the form, "and gave it to Col. Leighton. Afterwards "all that I heard of or respecting the option "was that it was given to Mr. Ford."

Q. "What was the consideration to Mr. "Ford in the conversation?

A. "*It was that he should pay back to* "*Col. Leighton and these people so much* "*money*—the amount of money that he was "to give for the land I do not remember, but "that he had a certain time to do it in, and "that time was the essence of the contract."

"*My advice to these parties was that* "*they were to hold possession of the land* "*until the money was paid.*"

Here is the secret:—"They were to hold possession of the land"—What as? Security "*until the money was paid.*"

Again Major Collins, (fols. 210 and 211).

Q. "Was that an agreement to pay back "upon the money that Judge Johnstone and "the others were paying to Mr. Ford and "Mr. Wallace for the land in order to get "the land back?

A. "No, sir, my understanding of that "from Col. Leighton was, that they gave "Mr. Ford the option of the purchase of the "land at an increased price over what they "were paying for the land, and *Col. Leigh-* "*ton expressed it, that that was one of the* "*things that induced, not himself so much,* "but *induced the other parties to be willing* "*to purchase it at the price they were offer-* "*ing for the land*, and I knew that Mr. "Ford was a sharp shrewd, real estate "dealer, and was acquainted with our gene- "ral laws and he was willing, as I under- "stood from himself, *to take the contract* "*and make it as strong as it could be made,* "*so as to protect Col. Leighton and Mr.* "*Davis and Mr. Connable and Judge John-* "*stone.*

"*That was, if he did not comply with the* "*terms of the contract he should not have* "*any rights in the land whatever, and that* "*they should not be compelled to foreclose* "*it upon him.*"

In Peugh *vs.* Davis, 96 U. S., 332, this Court says:

"So long as the instrument is one of secu- "rity, the borrower has in a Court of Equity

"a right to redeem the property upon the "payment of the loan."

"This right cannot be waived or abandoned "by any stipulation of the parties made at "the time, even if embodied in the mortgage."

"This is a doctrine from which a Court of "of Equity never deviates.

"Its maintenance is deemed essential to "the protection of the debtor, who, under "pressing necessities, will often submit to "ruinous conditions, expecting or hoping "to be able to repay the loan at its matu-"rity."

Thus the land was held as security until Ford should "pay back" so much money.

Also, "my advice to these parties was, that they were to hold possession of the land until the money was paid."

Take security for the advances. Then draw an option contract so strong that it cannot be foreclosed.

Folio 213 R.

"Q. Is that the same kind of a contract "that you recommended these gentlemen to "give Mr. Ford?"

"A. *No, sir, it is not*, IT IS NOT SO "STRONG *as the one that I recommended.*"

This lets Maj Collins gently down if the Court should hold the option contract and the deeds constituted a mortgage.

The major drew this option contract so it would

stand under the laws of the State of Iowa, and forfeit the lands provided the money was not "paid back" and so that the grantees should hold the lands until the money was paid without it being necessary to foreclose under the option contract.

Forfeiture—Forfeiture is the major's stronghold—forgetting that equity abhors a forfeiture even in the State of Iowa.

E. R. Ford, folio 281:

> "Q. Do you recollect how much money "the plaintiffs agreed to furnish Mr. Wal- "lace upon those lands described in this "contract?"
>
> "A. I think *they were willing to take the* "*lands* and *to advance* upon the lands a dol- "lar and a half an acre—and the number of "acres was over two thousand—I think over "three thousand."

"Take the lands" and "advance" a "dollar and a half an acre." This looks like security:

Johnstone states that he had no money to loan.

Davis states that he had no money to loan.

Connable states that he had no money to loan.

That none of them ever heard of a loan.

John A. Wallace states that the agreement was made with Col. Leighton and himself (p.98 R., folios 348, 349 and 350).

> "All the arrangements were made with

"Col. Leighton about the loan. * * *
"*He said to avoid the little technicalities of*
"*usury, we had better have the assignment*
"*or contract to reconvey, made in the name*
"*of my agent, Mr. Ford,* and I told him
"that I would agree to anything to get the
"money quickly, that would make them
"secure and at the same time make me se-
"cure."

Folios 374 and 375.

"Q. You have testified that you told Mr.
"Leighton that you wouldn't sell these lands
"for any such sum as a dollar and a half an
"acre?"
"A. I did."

Again folio 359 :

"*Well, he said,*" (meaning Leighton)
"*that they would have to have a good bonus*
"*for loaning the money that short time on*
"*real estate, that they had not seen, and*
"*do it so quickly, as I wanted the money.*"

This evidence of Wallace is uncontradicted.

This looks still more like security.

Option Contract—pp. 71 and 72 R., folios 255-259, dated Feb. 17th, 1875, signed by all the grantees and by E. R. Ford.

Acknowledged Feb'y 17th, 1875.

The deeds were acknowledged before the same

notary and on the same day. See Exhibits I and II, pp. 45 and 46 R.

William Ballinger, the notary, states that the option contract was signed and delivered before the delivery of the deeds (p. 88 R., folios 315 and 316).

> "Q. The date of said assignment is stated "as of February, 1875, without giving the "day. Do you know how that happened "that the day of the month was not put in "the date of the assignments."
>
> A. "Yes, sir; I think I do. I think that "the date was not put in, because the tran- "saction was not yet completed, and that "Mr. Wallace wanted this paper assigned "to him before the transaction was com- "pleted, and didn't wish it in Mr. Ford's "hands, and wanted to make sure of it, and "so had it indorsed in advance."

Folio 317.

> A. "At one time I had just a moment's "conversation with Mr. Leighton in which "the matter of the assignment, before it "went into Wallace's hands, or before Wal- "lace completed the transaction, was men- "tioned, and Leighton laughed and said, "'*And so he got the paper signed in ad.* "*vance.*' Meaning the option contract that "was assigned by Ford to Wallace."

Folio 319.

> "Well, Mr. Wallace consulted with me

" something about these matters, and he was
" very averse, I remember, to having the
" deed pass out of his hands until he got
" this contract into his own possession."

Folio 321.

" Well, I think Mr. Wallace had this
" paper in his hands before the deed was de-
" livered, or that this assignment was com-
" pleted and the deed was delivered."

Folio 327.

" I think Ford brought the paper signed
" by all the parties, and as the transaction
" was not yet completed, that he made the
" assignment to Wallace without date."

C. F. Davis, p. 40 R., folio 145.

Q. " The opption contract was then signed
" and delivered before it was acknowledged?
A. " Yes, sir."

John A. Wallace, p. 102 R., folio 363.

" So I took Mr. Ford into Mr. Ballinger's
" office on the day before the contract was
" executed and delivered to me, and Mr.
" Ballinger wrote out an assignment for him
" to assign the contract to me, which he did
" assign there. So that when the contract
" was executed and acknowledged by the
" plaintiffs and Mr. Leighton and Mr. Ford
" the deed was delivered and the contract
" was delivered to me."

From the evidence of Mr. Ballinger we find that Wallace would not trust Ford with the option contract, so the assignment was made before the de-

livery of the deeds, and Mr. Leighton knew that fact, because he so stated to Ballinger.

The option contract was signed by the appellees and by Mr. Leighton, and the assignment was made by Dr. Ford to Wallace prior to the delivery of the deeds, and also prior to the acknowledgment of the contract.

Johnstone, Davis and Connable state that the option contract was delivered at the same time as the delivery of the deeds, see p. 29 R., folio 103: p. 32 R., folios 118–144 and p. 44 R., folio 162.

Ballinger talked with Col. Leighton about the delivery of the option contract—his testimony stands uncontradicted.

E. R. Ford was the agent of John A. Wallace and these grantees knew that fact, before the delivery of any of the papers and in giving him the option contract they were giving it to John A. Wallace.

Mr. Leighton was one of the purchasers and it seems from the testimony of Wallace that Leighton suggested that the option contract "would "not look very well to be made straight to me "(meaning Wallace) for such large interest for "sixty days."

Edward Johnstone in his testimony, p. 28 R., folio 99, says: "Ford came here not as the owner "of the land, but as an agent, for the purpose of "assisting Wallace in making the sale."

C. F. Davis, p. 37 R., folio 136 and p. 39 R., fo-

lio 144, says the same thing. Also Maj. W. B. Collins, p. 55, folio 199.

E. R. Ford p. 77 R., folios 278 and 279 says :

> "I had no interest beyond the compensa-
> "tion paid me by John A. Wallace."
> "I told Mr. Leighton so.—"p. 86 R,
> "folio 308. 'I claimed nothing beyond my
> "commission.'"

There is no evidence that the agency of Ford was concealed and kept from the knowledge of the grantees—hence these grantees gave this option contract to Ford or his assigns and by so doing they gave it to Wallace.

Point III.

"In examining this question it is of great importance to inquire whether the consideration was adequate to induce a sale. When no fraud is practiced, and no inequitable advantages taken of pressing wants, owners of property do not sell it for a consideration manifestly inadequate, and, therefore, in the cases on this subject great stress is justly laid upon the fact that what is alleged to have been the price, bore no proportion to the value of the thing said to have been sold."

Russell *vs.* Southard, 12 How, 148.
Conway *vs.* Alexander, 7 Cranch, 241.
Morris *vs.* Nixon, 1 How, 126.

Vernon *vs.* Bethell, 2 Eden, 110.
Oldham *vs.* Halley, 2 J. J. Marsh, 114.
Edrington *vs.* Harper, 3 J. J. Marsh, 354.

VALUE OF LANDS IN THE YEAR 1875.

See deed, Exhibit I, p. 45 R., folios 164, 165,—640 acres for $960, which is $1.50 per acre.

See deed, Exhibit II same parties, pp. 45, 46 R., folios, 167, 168, 169,—2,544 acres for $4,316, which is $1.65 per acre. That makes $5,276 as the consideration.

See evidence of Johnstone, p. 27 R., folios 103 104. "We paid $3,500 cash, and held back $1,376 until we ascertained the taxes were all paid."

This makes $4,876 instead of $5,276 as the consideration named in the deeds. This is $400 less, which makes $1.53 and a mill per acre.

Mr. Leighton sold his quarter interest in these same lands to C. F. Davis on the 5th day of August, 1875. See Exhibit 5, deed, p. 50 R., folios 180, 181.

Consideration $440. 1-4 of 640 acres, 160 acres; which makes it $2.75 per acre.

See Exhibit 6, deed. Same parties, pp. 50, 51 R., folios 182, 183, 184.

Consideration $2,629,—956 acres.

This makes $2.76 and a fraction of a mill per acre.

And on the next day the appellee, Johnstone, purchased from the appellee, Davis, one-half of the interest conveyed by Leighton to Davis for the same price per acre.

See Exhibit 7, pp. 51, 52 R., fols. 185, 186

Exhibit 8, pp. 52 and 53 R., fols. 188–189–190.

Mr. Leighton transferred more lands than his interest in the Wallace contract. The increase came from the Crafton contract.

The appellees invested $4,876 on the 17th of Feb., 1875.

Then within six months they sold and transferred to each other these Wallace lands at an increased price of $1.25 per acre.

The evidence shows that the year 1875 was one of great depression in wild lands in the State of Iowa.

A. L. Connable, p. 43 R., fols. 159 and 160.

> "There were certain circumstances under "which it seemed to render the whole "country worthless."
> "*Grasshoppers and so on.*" "There was "land sold for less money than we paid."

In 1875, which we call the grasshopper year Davis buys lands on Feb. 17th, for $1.50 per acre. Then gives an option contract for sixty days to sell the same lands to the agent of the original

grantor, which option expires about Aprll 17th, 1875. Then in less than four months from that time sells these same lands to Edward Johnstone an original grantee with him at $2.75 per acre.

This all happened in a grasshopper year.

John A. Wallace, p. 105, fol. 375.

> "Some of the lands I valued more than "others of them. I valued them at from "$7.00 to $12.50 per acre."

A. W. Miller, called for appellant (p. 131 R., fol. 457).

> "The value of said lands in Clay County, "Iowa, was on February 17th, 1875, $2.50 to "$3.00 per acre."

J. B. Edmunds, called for appellant (p. 133 R., fol. 462).

> "The value of the Clay County lands was "on February 17th, 1875, from two to three "dollars per acre."

Again on cross-examination, this witness states (fol. 464 R.)

> "Q. What was the market value of said "lands sold in one lot to one purchaser or "set of purchasers in February, 1875?
> "A. Not to exceed a dollar and a half an "acre, meaning said Clay County lands."

Also

> "In June, 1876, a large tract in Clay "County, sold for two dollars an acre, cash."

E. R. Ford, called for appellant p. 77 R., fols. 277 and 278.

This conversation was held between William Leighton, John A. Wallace and E. R. Ford.

> "Q. What reason was given in the con-
> "versation for agreeing to give Mr. Wallace
> "or yourself an opportunity to pay a cer
> "tain amount, and take these lands within
> "a certain time?"
>
> "A. *Mr. Wallace considered the land to*
> "*him of much more value than expressed in*
> "*either of those amounts specified. That*
> "*is, I should say, specified in the contract,*
> "*and desired to recover the land by pur-*
> "*chase, repurchase and subsequent use, and*
> "*realize a thus further value.*"

John A. Elliott, called for appellees (pp. 62 and 63 R., fol. 227).

> "From 1873 to 1878, the price of wild
> "lands in Northwestern Iowa, was very
> "much depressed, and there was very little
> "selling. Lands were offered me for sale in
> "Sioux, Clay and Palo Alto Counties in
> "1875 and 1876, at from $1.75 to $2.00 per
> "acre."
>
> "The lands described in the petition be-
> "longed to D. M. V. R. R. indemnity
> "lands."
>
> "I was land commissioner for that Co.,
> "and had examined the same for the com-
> "pany."
>
> "The minimum price fixed by the D. M.

"V. R. R. Co., on their lands was $5.00 per "acre on seven years' time."

James M. Hoskins, called for appellees (p. 68 R., fol. 244).

"I think I helped to sell some for John A. "Wallace about this time for two dollars per "acre, near these same lands amounting to "1,720 acres for $2 per acre. We thought "we had made a good sale."

In fol. 248, this same witness states that these same lands in Clay County, Iowa, were worth $13,-600, on Sept. 5th, 1882.

Edward Johnstone, appellee (p. 31 R., fol. 114).

"I think the whole amount makes a little "over $1.50 per acre. We had agreed upon "a round sum, $4,876 for 3,194 acres."

It was 3,184 acres mentioned in the deeds, Exhibits I and II, (pp. 45 and 46 R., fols. 164 to 170), so Mr. Johnstone is in error about 10 acres.

Fol. 114 R.

"Mr. Davis and I and others, purchased "from John D. Crafton, in March, 1875, "2,880 acres of land in the counties of Buena "Vista, Clay and Dickinson, for $1.50 per "acre."

Still Mr. Johnstone, this appellee, pays for a half of the Leighton interest in these Wallace lands on Aug. 6th, 1875, $2.75 per acre, for what were lo-

cated in Sioux County, and $2.76 per acre for what were located in Clay County.

See Complainants' Exhibits Nos. 5, 6, 7 and 8, pp. 50, 51, 52 and 53 R.

C. F. Davis buys the undivided quarter interest in the Wallace lands owned by William Leighton, on Aug. 5th, 1875, for $2.75 per acre, and sells to Edward Johnstone for the same price the next day.

Charles P. Birge called for appellees.

Page 40 R, fol. 148.

> "I bought myself some thousands of acres "in Clay and Sioux and other counties at "from $1.25 to $2.50 and $3.00 per acre."

Thus closes the evidence about the value of the lands.

There is one fact that stands out prominently in the mass of conflicting evidence; THAT IS, THAT DAVIS AND JOHNSTONE PURCHASED THE LEIGHTON INTEREST IN THE WALLACE LANDS DESCRIBED IN THE PETITION FOR $2.75 PER ACRE ON AUG. 5TH AND 6TH, 1875.

This is conclusive that the Wallace lands were worth one dollar and twenty-five cents per acre more than the appellees advanced to Wallace Feb. 17th, 1875, and 3,184 acres at $1.25 per acre, make $3,976, a comfortable profit for a six month's investment of $4,876.

Recapitulation.

(*a.*) The deeds Exhibits I and II, pp. 45 and 46 R., are absolute upon their faces.

This is admitted.

(*b.*) Were they intended as a security for the payment of money ?

Edward Johnstone states :

> "That Ford was the agent of Wallace."
>
> "That Ford was anxious to get an option "to *repurchase* these lands, provided we "gave him sixty days time. He agreed to "pay $5,876."
>
> "*That offer determined me to make the* "*the purchase.*"

Why ? because Johnstone thought the lands good security for the money advanced, and then he and his associates would make a thousand dollars

Major W. B. Collins states :

That Col. Leighton consulted me upon the effect of giving an option to Mr. Ford.

Leighton desired it in such a way that it would be unnecessary to foreclose the option contract.

That Ford should not have "the right of redemption."

"I gave him a printed form of contract, "afterwards I heard that it was given to Mr. "Ford."

"The consideration to Ford was, that he "should '*pay back*' to Col. Leighton and "these people, so much money.

"*My advice to these parties was, that they "were to hold possession of the land until "the money was paid.*"

Security again.

"That was, if he (Ford) did not comply "with the terms of the contract, he would "not have any rights in the land whatever, "and that they should not be compelled to "forclose it upon him."

Take security on land and have Major Collins *draw a contract of reconveyance so strong* that no foreclosure could take place.

Dr. E. R. Ford, agent of Wallace, but these appellees employed a lawyer to draw the answer for Ford in this suit.

Major W. B. Collins (p. 59 R, fol. 212).

Was requested by one of these appellees to draw the answer for Mr. Ford.

His memory is rather defective, still he states (p. 78 R, fol. 281),

"I think they (the grantees in Exhibits "I and II) were willing *to take the lands* and

"*to advance upon the lands a dollar and a*
"*half an acre.*"

This means to take the lands as security and allow the grantor to borrow a dollar and a half an acre.

John A. Wallace:

Leighton said, to avoid the little technicalities of usury, we had better have the assignment or contract to reconvey made in the name of my agent, Mr. Ford; and I told him that I would agree to anything to get the money quickly. That would make them secure and at the same time make me secure.

This was a conversation between Leighton and Wallace.

"I told Leighton that I would not sell
"these lands for any such sum as one dollar
"and a half an acre.
"Well, he said (meaning Leighton) that
"they would have to have a good bonus for
"loaning the money that short time on real
"estate that they had not seen."

So it was agreed that the bonus should be $1,000.

Major W. B. Collins *makes a stronger case of security than Wallace.* but *he makes the security so strong that it cannot be foreclosed.*

Dr. E. R. Ford does not have a vivid memory, but his evidence makes the land security.

Wallace tells the whole story of the conversation with Col. Leighton.

Nothing but security.

Dr. E. R. Ford,

Agent of Wallace :

All parties agree to that, and all knew it when the negotiations began.

William Ballinger, Notary :

Took the acknowledgments of the deeds and option the 17th day of February, 1875. States—

That the option was signed by Johnstone, Davis. Connable and Leighton, and Ford, and assigned by Ford to Wallace before the deeds were delivered by Wallace.

Also that Leighton knew of the assignment by Ford to Wallace.

The reason there is no date to the assignment by Ford to Wallace was that the transaction was not then completed.

There is a great diversity of opinion about the value of these lands in 1875.

The grasshoppers nearly consumed the northwestern part of Iowa during the summer of 1875.

Judge Johnstone and C. F. Davis purchased the Leighton interest in the Wallace lands on Aug. 5th and 6th, 1875, just at the time when the grasshoppers were the thickest, for two dollars and seventy-five cents per acre, which was one dollar

and twenty-five cents an acre more than they "advanced" upon them in February, 1875.

This settles the question of value of the lands.

These grantees "advanced" to Wallace four thousand eight hundred and seventy-six dollars February 17th, 1875. and on August 5th, 1875, Leighton, a grantee, sold his quarter interest in the Wallace lands to Davis, and then Davis grantor to Johnstone grantee, at an increase of one dollar and twenty-five cents per acre, which makes a profit of three thousand nine hundred and seventy-six dollars.

This is thirteen per cent. per month or seventy-eight per cent. for the investment of six months.

A thrifty set of grantees, and all done in a grasshopper year.

It does seem that the Wallace lands were held as security for the payment of money.

(*c*). They all agree (grantor and grantees) that the option contract was a separate contemporaneous agreement in writing to reconvey the same lands upon the payment of five thousand eight hundred and seventy-six dollars.

This was just one thousand dollars more than the grantees advanced to Wallace.

The option was given to Dr. E. R. Ford, or his assigns—all the grantees knew Ford was the agent of Wallace—Leighton knew that the option had

been assigned to Wallace by Ford prior to the delivery of the deeds.

Leighton suggested that the option be made in the name of Ford, so as to avoid the little technicalities of usury. It was so made—the negotiations were conducted by Col. Leighton for the grantees, and he seems to have known nearly as much of the general laws of the State of Iowa as Major W. B. Collins. The evidence also shows that Col. Leighton and the Major kept their offices together.

This accounts for their universal knowledge of the general laws of the State of Iowa.

The decree of the Circuit Court of the United States for the Southern District of Iowa should be reversed.

GEORGE NORRIS,
Of Counsel for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 94. In Equity.

JOHN A. WALLACE, APPELLANT,

vs.

EDWARD JOHNSTONE, A. L. CONNABLE, AND C. F DAVIS.

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

BRIEF AND ARGUMENT FOR APPELLEES.

JAMES HAGERMAN,
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JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 94. In Equity.

JOHN A. WALLACE, APPELLANT,

vs.

EDWARD JOHNSTONE, A. L. CONNABLE, AND C. F. DAVIS.

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

BRIEF AND ARGUMENT FOR APPELLEES.

STATEMENT OF THE CASE.

This was a suit in equity brought by appellees against appellant and one E. R. Ford to quiet the title to 3,184 acres of wild land in Sioux and Clay counties, Iowa.

There was a decree for the complainants in the circuit court.

The defendant Wallace appeals.

The question litigated below was whether two deeds of said lands from the appellant to the appellees and one William Leighton, together with a contract, whereby the appellees and said Leighton gave the defendant Ford an option to purchase said lands from them within sixty days, really

constituted a mortgage of said lands by appellant to appellees and said Leighton.

In the winter of 1874–'5 wild lands in Northwestern Iowa were a drug upon the market. There were many lands for sale in large tracts. Purchasers were few and far between—there was really no market value for large tracts. If in large tracts, the buyer for cash could generally fix his own price. What was sold was sold very low. The price was very much depressed and there was very little selling. This was the period following the great panic of 1873, which bore especially hard upon all investments connected with railways; moreover, the grasshoppers seemed to render the whole country worthless.

At the same time there was afloat what was called Missouri war scrip. It was purely speculative. It was selling at five cents on the dollar, but a witness who bought some at that time has never since been able to dispose of it at any price.

The appellant, John A. Wallace, bought from N. A. Cowdrey and D. W. Kilbourne the lands in controversy in the winter of 1874–'5. He paid for them in Missouri war scrip at an average of ten dollars per acre. The scrip, however, being worth only five cents on the dollar, the price paid by Wallace for these lands, when reduced to cash basis, was only fifty cents per acre.

Wallace was in great haste to dispose of the lands, perhaps because he feared that Cowdrey and Kilbourne might set aside the sales. He employed the defendant Ford as his agent to dispose of the lands. Ford applied to the appellees and William Leighton, all of whom had theretofore been buying wild lands in Northwestern Iowa, but none of whom made a business of lending money.

The result of the ensuing negotiations was that the appellees and William Leighton—February 17, 1885—purchased the lands from Wallace for $4,876.00, being a trifle over $1.50 per acre, and Wallace made, executed, and de-

livered to the appellees and Leighton deeds conveying the lands, with covenants of warranty. The appellees and Leighton borrowed the money with which they paid Wallace for these lands. The price paid was a fair value for the lands, as shown by all the witnesses on that subject. Wallace's own witness, J. B. Edmunds, testifies that the lands could not have been sold for more than that.

While appellees and Leighton were hesitating whether to buy the lands or not Ford told them he was anxious to have the option of purchasing said lands within sixty days at an advance of $1,000 over what they were to pay Wallace—*i. e.*, $5,876. Ford was a man of reputation at Keokuk, and was respected there and thought to be a man of good judgment, and his anxiety to get such an option caused them to think the purchase was a good one and to buy the lands.

Accordingly the appellees and Leighton made a contract with Ford giving him such an option.

The purchasers, appellees and Leighton, immediately took control and management of said lands, began to pay taxes upon them, put them in charge of agents for sale, and from time to time sold portions of them. Leighton, some months after the purchases, sold his share of the lands to appellee Davis, and Davis afterwards sold one-half of Leighton's share to the appellee Johnstone. Leighton subsequently, and prior to the institution of this suit, died.

Ford, without the knowledge of appellees, assigned said option contract to Wallace. Neither Wallace nor Ford attempted to exercise said option either within said sixty days or at any time thereafter, but some time after the expiration of said sixty days Wallace put the option contract on record. Appellees never knew of said assignment until just before this suit was begun. Some six years afterwards an agent of appellees discovered this contract upon the record, and appellees, fearing that it might interfere with sales, brought this suit in the State court to have said option declared forfeited and to quiet the title, making

Wallace and Ford defendants. Wallace answered, claiming that the transaction of February 17, 1875, was not in reality a sale of said lands, but that said deeds with the option contract constituted a mortgage, and that the money paid to him was really a loan on the security of said mortgage. The suit was then removed to the Federal court, where Wallace filed a cross-bill asking to redeem. Complainants replied to the answer of Wallace and answered his cross-bill. Ford answered, admitting the allegations of complainants' bill and disclaiming any interest in the lands. Testimony was taken and there was a decree for complainants in the circuit court; Wallace appeals. The main, if not the sole, question presented by this appeal is whether the transaction of February 17, 1875, was an absolute sale or a mortgage.

ARGUMENT.

I.

Upon the face of the papers the deeds and contract of February 17, 1875, did not constitute a mortgage.

These papers are—

1. Deed of Wallace and wife to appellees and Leighton for 640 acres in Sioux county. (Printed Transcript, 45.)

2. Deed of Wallace and wife to appellees and Leighton for 2,544 acres in Clay county. (Printed Transcript, 45, 46.)

3. Contract whereby appellees and Leighton give E. R. Ford the option to purchase said lands from them within sixty days for $5,876.00. (Printed Transcript, 71.)

The two deeds were on their face absolute conveyances of said lands in fee simple in usual form, with covenant of warranty. There was no reservation or condition of any kind in the deeds.

The said option contract was between appellees and Leighton, parties of the first part, and E. R. Ford, party of the

second part. It is signed by all the parties. The material part of it is as follows:

"That for a good and valuable consideration the said party of the second part has the option of purchasing, for the period of sixty days from the date hereof, of the said first parties the following real estate (describing it) upon the following terms, namely: If the said E. R. Ford or his assignees hereof shall in said sixty days deposit or cause to be deposited to the credit of said parties of the first part, in the Keokuk Savings Bank, of Keokuk, Iowa, the sum of fifty-eight hundred and seventy-six dollars, or pay to them said amount in said city of Keokuk within said period of time, then the said parties of the first part will make and deliver to said second party or his assignees a deed of *aforesaid* warranty against the claims of all persons claiming by, through, or under them or either of them, conveying all of said lands hereinbefore described to said second party or his assigns."

Said papers did not constitute a mortgage for several reasons, namely:

1. There was no debt. It is very clear upon the face of the papers that no debt from Wallace to appellees and Leighton is created. There is no trace of such a thing in the papers. The only papers signed by him were the two deeds, which were ordinary deeds of conveyance. Neither is there a debt from Ford. He did not promise or in any manner bind himself to pay the $5,876. He merely took an option to buy upon the payment of that sum, of which he could avail himself or not, as he chose. Appellees and Leighton could not compel him to pay the money and take the lands. It follows that upon the face of the papers there was no debt. There being no debt, there could be no mortgage.

In Conway *vs.* Alexander, 7 Cranch 218, 237, in a case of this kind, Mr. Chief Justice Marshall, delivering the opinion of the Court, said:

"If the vendee must be restrained to his principal and interest, that principal and interest ought to be secure. It

is therefore a necessary ingredient in a mortgage that the mortgagee should have a remedy against the person of the debtor."

Chancellor Kent, speaking of the distinction between a mortgage and a conditional sale, says:

"The test of the distinction is this: If the relation of debtor and creditor remains and a debt still subsists, it is a mortgage; but if the debt be extinguished by the agreement of the parties or the money advanced is not by way of a loan, and the grantor has the privilege of refunding, if he pleases, by a given time and thereby entitle himself to a reconveyance, it is a conditional sale."

4 Kent Com. (5 ed.), 144, note *e*.

This doctrine is also held in the following cases:

Snavely *vs.* Pickle, 29 Gratt., 27, 34, 35.
Slutz *vs.* Desenburg, 28 Ohio St., 371, 376, 377.
Flagg *vs.* Mann, 14 Pick., 467, 478.
Glover *vs.* Payn, 19 Wend., 518, 520, 521.
Slowey *vs.* McMurray, 27 Mo., 113, 115, 116.
Galt *vs.* Jackson, 9 Georgia, 151, 156.
Spence *vs.* Steadman, 49 Georgia, 133, 141.
West *vs.* Hendrix, 28 Ala., 227, 234.
Ruffier *vs.* Wormack, 30 Tex., 332, 341, 342.
Pitts *vs.* Cable, 44 Ill., 103.
Magnusson *vs.* Johnson, 73 Ill., 156.
Hicks *vs.* Hicks, 5 Gill. & J., 75, 81, 83, 86.
McNamara *vs.* Culver, 22 Kas., 661.
Butt *vs.* Van Orden, 33 N. J. Eq., 143.

In Spence *vs.* Steadman, 49 Georgia, 133, 141, the court said:

"If it was, in fact, simply a contract of sale, with a right—an option—in Steadman to rebuy, with no corresponding right, either express or implied, in the other parties to insist upon the repayment of the money, then it was not a mortgage."

It is clear, therefore, that these papers on their face did not constitute a mortgage for the reason that they do not show any debt.

2. Furthermore, the papers on their face do not constitute a mortgage because the option to purchase was not given to the vendor, Wallace, but to a third person, Ford.

In order to constitute an absolute deed, with an agreement by the vendee to sell, such agreement must be made with the vendor and not with some other person.

Flagg *vs.* Mann, 14 Pick., 467, 479.
Shaw *vs.* Erskine, 43 Maine, 371, 373.
Treat *vs.* Strickland, 23 Me., 234–241.
Hill *vs.* Grant, 46 N. Y., 496.
Penn Co. *vs.* Austin, 42 Pa. St., 257, 266.
Payne *vs.* Patterson, 72 Pa. St., 114, 137.
Stevenson *vs.* Thompson, 13 Ill., 186, 197.
Carr *vs.* Rising, 62 Ill., 14, 19.
Magmusson *vs.* Johnson, 73 Ill., 156.

In Flagg *vs.* Mann (14 Pick., 467, 479) the court said the two agreements "must be between the same parties," citing the authorities, and the same doctrine is held in the other cases above cited.

The option contract, then, being an option given to Ford and not to Wallace, the vendor, it cannot with the deeds be held together to constitute a mortgage on the face of the papers.

It follows from what we have said that the papers executed February 17, 1875, do not on their face constitute a mortgage.

II.

If the contract giving the option to Ford is what on its face it purports to be—namely, a mere option to Ford and his assigns to purchase within sixty days—then Ford and

his assigns must exercise their option and make the purchase within the time limited. If they do not their right is gone.

Slutz *vs.* Desenburg, 28 Ohio St., 371, 382.
Sloway *vs.* McMurray, 27 Mo., 113, 117, 119.
Saxton *vs.* Hitchcock, 47 Barb., 220, 225.
Conway *vs.* Alexander, 7 Cranch, 218.

In the case last cited Mr. Chief Justice Marshall, delivering the opinion of the Court, said:

"To deny the power of two individuals to make a contract for the purchase and sale of lands defeasible by the payment of money at a future day; or, in other words, to make a sale with a reservation to the vendor to repurchase the same land at a fixed price and at a specified time, would be a transfer to the courts of chancery, in a considerable degree, of the guardianship of adults as well as of minors."

In Slutz *vs.* Desenburg, 28 Ohio St., 371, 382, the court said:

"The deed was absolute on its face, and no sufficient reason appears why it should not now remain so. By the agreement the grantor acquired an option to repurchase the land in a given time for a given sum. He failed to comply with the terms of the agreement and lost his option. The law is, if the transaction is a conditional sale, the party seeking a reconveyance to himself must comply with the conditions imposed on him or the property will be lost to him."

It follows from the foregoing propositions that unless the contract executed February 17, 1875, is other than it purports to be on the face of the papers, Wallace has no right to the lands in controversy, and the decree must be for the appellee.

III.

Parol evidence is no doubt admissible to show that the real transaction was a mortgage even against the face of the

papers, but in such case the evidence must be clear, satisfactory, and convincing. This rule is well settled, both in the courts of the United States and in those of the State of Iowa, where the land lies, as well as elsewhere.

Howland *vs.* Blake, 97 U. S., 624.
Coyle *vs.* Davis, 116 U. S., 108.
Codman *vs.* Peter, 118 U. S., 73.
Corbit *vs.* Smith, 7 Iowa, 60, 61.
Cooper *vs.* Skill, 14 Iowa, 578, 579, 580.
Gardner *vs.* Weston, 18 Iowa, 533, 535.
Hyatt *vs.* Cochran, 37 Iowa, 309, 310.
Sinclair *vs.* Walker, 38 Iowa, 575, 577.
Zurver *vs.* Lyons, 40 Iowa, 510, 512.
Woodworth *vs.* Carman, 43 Iowa, 504, 505.
Kibby *vs.* Harsh, 61 Iowa, 196, 198, 199.
Knight *vs.* McCord, 63 Iowa, 429, 430.
Ensminger *vs.* Ensminger, 39 N. W. R. (Iowa), 208.
1st Jones on Mortgages (2nd ed.), sec. 260.

In Corbit *vs.* Smith, 7 Iowa, 60, 61, Chief Justice Wright, delivering the opinion of the court, said upon this subject:

"The deed is absolute on its face. Complainant relies upon a parol contemporaneous agreement that it was received as a mere mortgage, and that he was to have the right to redeem. To establish such an agreement his proof should be clear, satisfactory, and conclusive, and not made up of loose and random conversations with respondent. Witnesses are so liable to forget or unwittingly misrepresent or mistake such conversations that their testimony should, as a general rule, be received with great caution. Indeed, all parol testimony against the answer of a respondent to establish a trust or to make a conveyance absolute upon its face a mortgage should be clear, and even then received with great caution."

IV.

The theory upon which Wallace presented his case in the court below was that the papers on their face did not consti-

tute a mortgage, but he undertook to show by parol that the transaction was in reality a mortgage. He claimed that in February, 1875, he applied to appellees and Leighton for a loan of money on the security of the lands in question, which he claims were then worth from $7.50 to $12.50 per acre, being from five to eight times as much as appellees and Leighton paid him; that they were willing to let him have it, but were not content with legal interest, and wanted $1,000 for the use of $4,876 for sixty days; that, in order to escape the usury law, the transaction was put into the form of an absolute sale of the lands by Wallace to appellees and Leighton with an agreement to resell within sixty days for $5,876; that in order to more completely cloak the transaction, instead of giving the agreement to resell to Wallace himself it was given to Ford; that it was, however, understood by all parties that Ford was merely a nominal party, and that he was immediately to assign the contract to resell to Wallace, and that he accordingly did so assign it. The appellees controvert every one of these claims.

V.

There Was no Loan.

This is the most important and decisive question of fact in the case. If there was no loan, it follows, as we have already shown, that there was no mortgage. The proposition that there was a loan rests solely upon the testimony of appellant, John A. Wallace, himself. No other witness so testifies. So far from establishing the proposition by evidence that is clear, satisfactory, and convincing, his testimony is loose, uncertain, without corroboration, and is met by an overwhelming preponderance of evidence the other way.

He testifies that he came to Keokuk in February, 1875, to get a loan on these lands, with Ford as his agent; that he and Ford saw Leighton and had several interviews with him; that Leighton agreed to loan the money, but said that

he and his associates would want more than ten per cent. interest, and, to avoid the usury laws and a foreclosure, it had better be put in the shape of an absolute sale and conveyance by Wallace to Leighton and his associates and an agreement for a reconveyance, and that this agreement was actually carried out by the papers as they appear of record. He says that his conversations were with Leighton only, and not with any of the appellees.

The claim of appellant that there was any other contract than that expressed in the deeds and the option contract rests on his unsupported testimony. The living witnesses to the transaction leading to the sale of the land and the execution of the option contract are Wallace, Johnstone, Collins, Davis, Connable, and Ford.

These witnesses, except Wallace, all concur that the entire contracts were expressed in the writings, namely, the deeds and the option contract.

Can this Court, in the face of this testimony, believe that Wallace had a secret contract with Leighton unknown to all others concerned in the transaction, including Wallace's own agent, Dr. Ford?

We submit, under the settled rules of evidence, that the testimony of a party interested, which is entirely uncorroborated, cannot prevail against a deceased party. In this connection we call the attention of the Court specially to 1st Wharton on Evidence, where the learned author, speaking of the underlying reason of the statutory rules excluding parties from testifying when the adverse party is dead, says:

"SEC. 467. The exception has been more cordially recognized from the fact that it rests on a principle which courts of equity concur in accepting. Thus, a pecuniary demand against the estate of a deceased person will not be considered as established by the oath of the person making such claim, unsupported by any other evidence. Of evidence of this class it has been remarked by James, L. J., even if legally admissible for any purpose, the interests of mankind imperatively require that unless corroborated it should be wholly

disregarded. Nobody would be safe in respect of his pecuniary transactions if legal documents found in his possession at the time of his death and endeavored to be enforced by his executors could be set aside or varied or altered by the parol evidence of the person who had bound himself. The English equity rule, however, receives the evidence of the surviving party when corroborated; our statutes exclude his testimony *in toto* when directed to establish or explain the contract."

We do not cite the foregoing section for the purpose of claiming that Wallace's testimony was not admissible. We do cite it, however, as strongly bearing on the question of what weight shall be given to his testimony. He seeks by his unsupported testimony to establish an oral contract with a party deceased at the time of the trial, which is in conflict with the written contract which he took from the man when both were living.

But these conversations were mostly in the presence of Dr. Ford and of Major W. B. Collins. Dr. Ford was the agent of Wallace, who brought him and these parties together. He was also Wallace's witness in this case. He testifies:

"88. The contracts, as written, correctly express the understanding and agreements between the parties at the time? Answer. I believe they do.

"89. And you know of no oral contract, besides these written contracts, in any way modifying them? Answer. I know of none."

Printed Transcript, page 83.

Again he says:

"102. And you don't mean to say that it was a loan? You don't mean to say whether it was a loan or what it was? Answer. I didn't so understand it, as a loan.

"103. And in your negotiation you did not understand it in that light, as a loan? Answer. I did not. From the beginning, in St. Louis, I think it was my own suggestion as to

this option of repurchase, knowing a mortgage or deed of trust would not be accepted for a short loan. Knowing that, I gave it as a suggestion or opinion that no short loan could be effected. As no loan was contemplated, *the subject-matter of a loan was left out of the question altogether.*

"* * * *And the question of interest was never discussed between Mr. Leighton and Mr. Wallace or the complainants and Mr. Wallace, as far as you know? Answer. Not at all; I am confident not at all. Whatever compensation the purchasers would consider in the matter would be in the nature of a profit on the land in selling. That idea I conveyed, and entertained it myself.*"

Printed Transcript, pages 84 and 85.

Major Collins testifies that Wallace and Leighton had a number of conversations in the common office of Leighton and Collins on the subject of this transaction, at which Major Collins was present.

"*He says he did not at any time hear anything said about a loan, but it was spoken of between the parties as a sale and a purchase.*"

Printed Transcript, 56, questions 9 and 10.

Edward Johnstone, one of the appellees, testifies:

"I talked of [with] Mr. Wallace and Dr. Ford several times on the subject, as they were here two or three days, *but I never heard from Dr. Ford or Mr. Wallace that he wanted a loan; there was never such a thing as a loan intimated.* I never heard anything from them except that they wanted to sell the lands. Wallace wanted to sell the lands and get money for them, because he needed it badly. The subject of loan was never intimated.

"16. Did you ever hear Mr. Leighton say anything on the subject? Answer. *Never; I talked frequently to Mr. Leighton and Mr. Davis and Mr. Connable, and I never heard anything said that would intimate that a loan was desired by Mr. Wallace; it was all with reference to the purchase of these lands.*"

Printed Transcript, page 31.

Mr. C. F. Davis, one of the appellees, says:

"*There was no other contract outside of those papers, either written or verbal, that I know of; I never heard a word mentioned about a loan in connection with the matter.*

"75. When did you first hear of any claim that there was a loan? Answer. About seven years after; six or seven years.

"76. Was it after the answer was filed in this case? Answer. Yes, sir; after the answer was filed.

"77. *Did you ever hear from Mr. Leighton at any time anything about any loan? Answer. No, sir; all my talk with Mr. Leighton was in regard to the purchase of the land.*

"78. *Did he ever talk to you about lending money? Answer. Never. At that time I had no money to loan.*"

Printed Transcript, page 38.

Mr. A. L. Connable, one of the appellees, says he was present at the time the contract was made; that it was made at the Keokuk Savings Bank; that all the parties were present. "Dr. Ford told me that Wallace had some lands in the northwest part of Iowa to sell and was obliged to raise the money and would sell them very cheap, and we, Johnstone and myself and Davis and Leighton, agreed to buy the lands at a certain price, about a dollar and a half an acre or near that, and we bought them."

"114. *Did you at any time loan Wallace any money upon these lands? A. No, sir.*

"115. *Was there at any time anything said about loaning him money? A. Never, to my knowledge.*

"116. *Did you ever hear anything, either from him or from Mr. Leighton, with reference to a loan upon them?* A. No, sir; never."

Further down he says he never heard of the claim that this was a loan until after the commencement of this suit.

"120. Now, was there any contract or understanding between any of the purchasers and Mr. Wallace and Mr. Ford outside of that which was expressed in the written contracts,

namely, the deeds from Wallace to you and the written option to Dr. Ford? A. Nothing."

Printed Transcript, pages 42, 43.

Wallace would have us believe that the terms of the contract were settled between him and Mr. Leighton alone, but the appellees all testify that all the parties were present when the agreement was made.

Printed Transcript, pages 29, 38, 42.

Furthermore, they testify, each for himself, that Mr. Leighton had no authority to make any contract or lease for them. (Printed Transcript, 33, 34, answers 27 and 28; Printed Transcript, 39, answer 82; Printed Transcript, 44, answers 132, 133.)

Now, is Wallace's story at all probable? Is it probable that there could have been a full negotiation for a loan lasting through a number of interviews, as Wallace says, at most of which interviews Dr. Ford and Major Collins were present and in which they participated, Dr. Ford as the agent of Wallace and Major Collins as the legal adviser of Leighton and appellees, without either of them hearing the subject of a loan introduced, and that the talk in their presence should always be of a purchase and sale and never of a loan? Is it probable that Leighton would attempt a negotiation of this kind without authority from either of the appellees, and without communicating either the negotiation or its result to either of the appellees, leaving them to enter into the contract supposing that it was just as stated in the papers executed? What possible motive could there be for such a course on Leighton's part? On the other hand, Wallace's motive in testifying as he now does is not far to seek. Is it probable that Wallace himself would always talk to each of the appellees of a sale, and of a sale only, and yet all along be negotiating with Leighton for a loan? Is it not far more

probable that, as Collins and Ford and Johnstone and Davis and Connable all testify, the negotiation was from the first for a sale and not for a loan, and that Wallace undertakes to put these conversations on Leighton because he is dead and cannot contradict him? Not only is the preponderance of the testimony largely against Wallace, who, it will be remembered, is an interested witness, but the evidence affords many indications that the transaction was a sale and not a loan.

1. Appellees and Leighton took no written evidence of debt or promise to pay, either from Ford or Leighton. Moreover, no one, not even Wallace, testifies to even a parol promise to pay.

2. Appellees and Leighton themselves borrowed the money to make this purchase. They were not money-lenders. (Printed Transcript, 32, A. 20; 38, A. 79; 43, A. 121).

3. The lands were not good security for the money. The price, considered as a sale, was not excessive; considered as a security for money loaned, the lands were inadequate in value, especially in their then almost unsalable condition. At that time wild lands in Northwestern Iowa were a drug in the market. Thus Mr. J. B. Edmunds, one of Wallace's own witnesses, who was a banker and real-estate dealer in Clay county, where all but one section of these lands were situated, and who knew about these specific lands and their value, says that there was at that time a good deal of land for sale in large tracts, and that he don't remember of any being sold at or about that time for cash (Printed Transcript, 134, A. 6). He further says that in February, 1875, purchasers for Clay county lands were few and far between. He says the market value of the Clay county lands in question, sold in a lump, was not to exceed a dollar and a half an acre; that he does not think they could have been sold for more than that (Printed Transcript, 133, Ans. 2, 4).

It will be remembered that appellees and Leighton paid $100 more than one dollar and a half an acre, namely, $4,876 for 3,184 acres.

So Mr. James M. Haskins, a banker and real-estate dealer, well acquainted with the value of wild lands in Clay county, says that in February, 1875, there was but little market value for any lands, and what was sold was sold very low. If in large tracts the buyer could generally fix his own price. (Printed Abstract, 67, A. 5.)

Mr. John A. Elliott, as land commissioner for the Des Moines Valley railroad, had given special attention to these lands. He says from 1873 to 1878 the price of wild lands in Northwestern Iowa was very much depressed and there was very little selling (Printed Transcript, 62, A. 5). This was the period following the panic of 1873, which was especially hard upon all investments connected with railways. Moreover, the grasshoppers seemed to render this whole country worthless. (A. L. Connable, Printed Transcript, 43, A. 125.)

Counsel for appellant, at page 22 of his printed brief, undertakes to make it appear that Mr. Connable's testimony is to the effect that it was in the summer of 1875 that the grasshoppers ravaged the country. His testimony will not bear that construction. He is speaking *of the time of the purchase*, February 17, 1875, and mentions among the circumstances which *then* seemed to render the whole country worthless the grasshoppers. They must, therefore, have appeared in the *prior* year, as they do not usually ravage the country in the winter time. The fact that they did not return in the summer of 1875 would have a tendency to help values, and probably that is one reason why Leighton was able to sell at an advance.

Mr. Charles P. Birge, who bought some thousands of acres of these lands, says that they were at that time greatly depressed and had very little if any salable value. He bought at from $1.25 to $2.50 and $3.00 per acre. He made a pur-

chase, through Dr. Ford, of lands in Clay county, being part of this same original block left on their hands, at $1.25 per acre. (Printed Transcript, 40, 41, A. 99–101.)

Mr. C. F. Davis, one of the appellees, says a very large amount of lands were about that time selling for the figures they paid Wallace in all that part of the country, and that he made, shortly after, other purchases at the same price. (Printed Trans. 39, A. 81.)

John A. Elliott fixes the value of these lands at from $1.75 to $2 per acre. (Printed Transcript, 63, A. 5, 6.)

James M. Haskins fixes the value of these lands at from $1.50 to $2 per acre. (Printed Abstract, 68, A. 6.)

From two to three dollars per acre is the extreme maximum of cash value put upon these lands at that time, sold in a lot, by any witness, except Wallace himself, who says that he considered them worth from $7.50 to $12.50 per acre at that time. This is merely another illustration of his reckless swearing, cases of which abound in his deposition—as, for instance, when he professes to own large quantities of real estate, but has not the remotest notion where it is; and when he claims to own real estate in St. Louis, but don't know whether it is in his own name or not, nor in what part of the city, nor upon what street it is situated. (Trans., 115.)

Now, with the values greatly depressed, purchasers few and far between, with cash purchasers getting land at their own price, with the lands having little if any salable value and very hard to sell at all, with the grasshoppers ravaging them, what man in his senses would loan upon such unsalable lands the full amount of money he could buy them for at the same time?

It might very well be a businesslike and prudent thing to pay an amount of money for an absolute purchase of the lands that it would be downright folly to loan upon them.

4. If this were a mortgage under the Iowa statute, which is as follows: "In the absence of stipulations to the contrary, the mortgagor of real property retains the legal title and right of possession thereto" (Code of 1873, section 1938), Wallace would have been entitled to the possession and control of the lands.

Now, in all the subsequent actions there was no recognition either of any relation of debtor and creditor or of any right on Wallace's part to the possession and control of the property. On the contrary, Wallace never offered to pay the money or any interest thereon, and appellees never demanded payment. Appellees and Leighton immediately upon the purchase took control and management of said lands, began to pay taxes upon them (which would not have been incumbent upon them if the transaction was a loan and mortgage). They never demanded from Wallace the payment or reimbursement of these taxes. Wallace never offered to pay taxes in the first instance or to reimburse appellees for the taxes they paid. If these taxes had not been paid by appellees the lands would long before the commencement of this suit have been lost to Wallace under tax sales, which in Iowa are good titles.

Appellees and Leighton also put them in charge of agents for sale, and from time to time sold parts of them. Moreover, some months afterwards, and after the option had expired, Leighton sold out his share of the purchase to appellee C. F. Davis at an advance, and subsequently Davis sold to Edward Johnstone, one of the appellees, one-half of the Leighton share. Davis and Johnstone would certainly never have paid Leighton a greater sum than his share of the alleged debt, if there really had been a debt. They paid him more than his share of the $5,876 would have been and much more than his share of the purchase-money paid Wallace, $4,876, with six per cent. interest.

All these subsequent transactions of the parties are a prac-

tical construction of the contract, and show how the parties themselves understood it at this time.

2 Jones on Mortgages (2d ed.), sec. 267.

O'Reilly *vs.* O'Donaghue, Irish Rep., 10 Eq., 73.

We submit that it is clear beyond controversy that there was no debt, and therefore no mortgage.

VI.

But suppose for a moment that Leighton and Wallace did agree for a loan and put the transaction into this form to avoid the usury laws, Leighton only had a one-fourth interest in the transaction. Such agreement was never made known to appellees or assented to by them; the transaction on its face was an absolute sale. Johnstone, Connable, and Davis all swore that Leighton had no authority to act for them (Printed Transcript, 34, A. 28; 39, A. 82; 44, A. 133, 134); so as to three-fourths of the bond the transaction was unquestionably an absolute sale. Can the transaction as to Leighton's one-fourth interest now be held to be a mortgage as against Johnstone and Davis? Clearly not, because they were innocent purchasers in good faith, for a valuable consideration, of Leighton's interest, and, upon the face of the papers, that interest was the fee simple, the option having expired before their purchase from Leighton.

Neither Davis nor Johnstone know anything outside the papers. They did not know of any agreement between Leighton and Wallace for a loan instead of a sale. (Printed Transcript, 38, A. 73; 31, A. 15, 16; 32, 33, A. 22.)

It follows that Davis and Johnstone hold the Leighton interest free from any supposed arrangement between Leighton and Wallace.

VII.

The option contract was in reality as well as upon its face given to Ford and not to Wallace. It follows that it could

not affect Wallace's absolute deeds of conveyance, and the option being to a third person, that there was no mortgage.

No reason was assigned why, if Leighton and appellees had really given the option to Wallace or for his benefit, it should have been made on the face of the papers to Ford, except the testimony of Wallace himself that there was a contract with Leighton for usurious interest which might thus be more effectually cloaked. This testimony being of conversations with a person since deceased, if it is admissible at all should, as we have already shown, be viewed with great caution, for three very material reasons:

1. Leighton is now dead and cannot testify upon the same proposition.

2. Wallace is the party interested, and it is necessary to testify the way he does in order to recover.

3. Leighton is charged with violating the law and is entitled to the presumption of innocence (Wharton on Evidence, § 468); but Wallace's testimony is overwhelmingly met by the other testimony in the case.

If there was no loan there could be no usury, and the giving of the option to Ford could not have been for the purpose of hiding usury. The testimony of Ford, Collins, Johnstone, Davis, and Connable, above cited, on the question of loan—five witnesses to one—completely meets and overthrows this testimony of Wallace.

As a matter of fact, the way the option came to be given to Ford was this: Wallace and his agent, Ford, were here trying to sell these lands to appellees and Leighton. The latter were hesitating whether to buy or not. At this stage of the negotiation, as a way of showing his opinion of the value of the lands, Ford expressed an anxiety to get an option to buy the lands from appellees and Leighton, within sixty days, at an advance of $1,000. Ford was a man of reputation at Keokuk and was respected there and thought to be a man of good judgment. It seems that his anxiety to get an option had considerable effect upon appellees and Leighton,

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inducing them to make the purchase (Printed Transcript, Edward Johnstone, 28, A. 9; 34, A. 38 to 40; 36, A. 54, 57; A. L. Connable, 44, A. 138, 139; W. B. Collins, 58, A. 5.) None of the appellees knew at the time of the transaction or at any time, until just before the commencement of this suit, that Ford had assigned his option to Wallace. (Printed Transcript, 30, A. 14; 34, A. 40; 44, A. 139; 39, A. 85, 86.)

We submit that upon the evidence the option contract was in reality as well as upon its face given to Dr. Ford and not to or for the benefit of Wallace. The fact that he assigned it to Wallace, or even that there was an understanding in advance between Ford and Wallace that he should assign it to Wallace, cannot change the matter, so far as the purchasers were concerned, they knowing nothing of it.

It follows that the transaction in question was not a mortgage; that Wallace therefore had no right of redemption, and that the decree should be here (as it was below) for the appellees.

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